

The Public Gambling Act

NO. III OF 1867.

WITH

Introduction Notes—analytical, explanatory and critical, Separate notes indicating difference between the Law in U. P. and that applicable to C. P., the Punjab, and other places governed by the Act full case-law, Important Notifications and Orders issued under the Act and several Local Gambling Acts relating to U. P., Bengal, Bombay and Burma &c. &c.

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PREFACE.

In this book an attempt has been made at a clear exposition of the law relating to gaming as laid down in the Public Gambling Act No. III of 1867. It is intended to facilitate the work of a careful study of the provisions of the Act, and also to serve as a practical guide readily affording all the information generally required for dealing with cases falling under it. How far the attempt has been a successful one, it will be for the reader to judge: little, therefore, need be added beyond a few words respecting the arrangement of the matter contained in the following pages.

The Act, in its application to the United Provinces of Agra and Oudh, has been amended by several Local enactments. This has necessitated the addition of separate notes with a view to elucidate the points whereon the law in the United Provinces differs from that applicable to other Provinces governed by the Act. These notes have been inserted at the end of MAIN NOTES to each section, under the heading 'U. P. AMENDMENT' which term has throughout been used as an abbreviation for "The Public Gambling Act, 1867, as amended by the United Provinces Acts." Where necessary, a *note* has been

appended at the conclusion of the text of a section indicating its modification for the United Provinces.

The Introduction contains a review of the main provisions of the Act, as also a brief notice of legislation on the subject effected at different periods both in India and England. It will be found useful as furnishing a bird's eye view of the law discussed in subsequent pages.

Cases reported down to the end of 1926 have been incorporated in the commentary. Cases decided under other Acts have also been referred to where they appeared to throw light on any provision of this Act. Where any unreported case has been cited, the court deciding the same and the date of its decision have been mentioned. Conflicts of opinion between different High Courts have been noted in proper places.

The Appendix includes several important notifications issued under the Act, besides a number of Provincial gambling enactments. These have been reproduced with the sanction of the Local Governments concerned, viz., of Burma, of Bombay, of Bengal, of the Central Provinces and of the United Provinces of Agra and Oadh,

whose kindness in generously granting the permission, the author gratefully acknowledges.

It is hoped that this book, in spite of any shortcomings, may still meet with the approval of congenial readers. Police Officers having any duties to perform in connection with cases relating to gaming, will find a perusal of this book extremely helpful in their task.

Agra, 1st June, 1927. } . B. N. RAIZADAY.

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Introduction.

Civilized communities look upon the practice of gambling on games of chance as a social vice fraught with danger to the State. It tends to promote idleness, dishonesty, and other vices, and thus has a pernicious influence on the character of those concerned in it. The inveterate gambler regards it as the easiest way of speedily making a fortune: and heedless of the fallacy underlying his notion, he gives himself up to it with the not infrequent result of bringing about his financial ruin. Having thus landed himself into poverty, he looks for means enabling him to carry on his harmful practice in the hope of, at least, repairing his losses. Ordinary pursuits of life possess little attraction for him; and moral degradation, a frequent concomitant of poverty soon overtakes him. Bitter disappointment occasioned by heavy losses may sometimes even drive him into putting an end to his own life. This is however what rarely happens; more often than not, the temptation of a possible self-enrichment by gaming still clings to his heart, and he resorts to crimes such as theft, extortion, and even murder in order to find money for gambling.

Nor is his evil habit confined to him alone. Every one coming in touch with him runs the risk of contracting the vice with all its consequences. Law whose object is the well-being of society, cannot view such a state of things with equanimity or indifference.

But although, in theory, gambling has been considered detrimental to the interests of society, the practice of civilized communities in regard to it has not been uniformly one for its suppression. Sometimes games perfectly innocent in themselves have been prohibited by law. At other times, governments tempted by the facilities of sharing in the gain, have openly encouraged gambling by licensing gaming-houses or instituting lotteries under their own authority. Prior to the year 1872, gambling in both these forms was encouraged in several of the principalities of Germany; Baden-Baden and Hamburg being the most famous resorts in Europe of the frequenters of gaming-tables. After 1872 when gaming was put down in these places, Monaco and Italy became the last public resort for this species of gambling in Europe. In France public gaming-tables were suppressed in 1838; there, as also in Belgium and Switzerland, lotter-

ies and sweepstakes' too are now illegal and subject to severe penalties.

In Great Britain, during the reign of Henry VIII., unlawful games which included cards, dice, and bowls were prohibited. Keeping common gaming houses for any unlawful games, was also forbidden under penalties. Labourers, servants, etc., playing at tennis, cards, dice, etc., out of Christmas time were offenders liable to punishment. Even during Christmas, they could play only in their masters' premises or presence. But any nobleman having an estate of £ 100 per annum could license his servants to play in his premises. In 1620, gaming-houses were licensed in London. In 1612, a lottery (the year 1569 marks the occurrence of first lottery, and 1709 the first Parliamentary lottery, in England) was granted for the benefit of the Virginia Company. In the ninth of Queen Anne, legislation was effected for the suppression of lotteries as public nuisances, and for avoiding suits to recover money won by gaming. In Britain, lotteries are now abolished except, in certain cases, for encouragement of art. During the time of George II., keeping gaming-house*, and all games with dice (except backgammon) were prohibited. Prohibi-

tions contained in the Act of Henry VIII, against bowling, tennis, or other games of skill were removed by the Act 8 and 9 Victoria, cap. cix, (on which the gambling Acts of India are based); it also penalizes the conducting of the business of a common gaming-house, or keeping without license, billiard or bagatelle tables. A later enactment (Act 17 and 18 Vict. cap. xxxviii) makes it an offence to obstruct the entry of an authorized officer into a gaming-house. Persons found in such a house are also subject to an additional penalty if they conceal their true names or addresses. Distinction between 'gaming-houses' and 'betting-houses' was removed by Act 16 and 17 Vict. cap. xix. Betting in public streets was forbidden by an enactment of 1873. Since then Acts have been passed imposing further restrictions on betting, and penalties on persons advertising or sending letters, circulars, &c., as to betting. See Street Betting Act of 1906.

In India under the Hindu rule, gaming does not appear to have been treated as a crime until the time of Manu who advocates its total abolition. Manu prohibits all games with dice, as also betting on animal races or fights. He classes gambling with theft and condemns it even though

it be resorted to for mere recreation. According to him, gambling constitutes a source of danger to the State; and those who practise it, whether in public or private, are offenders liable to any punishment the ruler might deem fit to impose. Under the Mohamadan Law too gaming was punishable as an offence. After the advent of the British rule, the magistrates were, for sometime, authorized to punish acts amounting to offences under the Mohamadan Law. Thereafter Acts were passed for regulating the Police and for the conservancy and improvement of Presidency towns; and provisions relating to gaming, contained in some of these were extended to the Punjab, the Central Provinces, and Oudh.

In 1867, this Act (Public Gambling Act No. III of 1867) was passed with a view to put an end to the practice of keeping common gaming-houses, and of public gambling and fighting of animals, prevalent in the provinces of Agra and Oudh, the Punjab, the Central Provinces, and British Burma. A common gaming-house, under the Act, means a house the owner or occupier of which levies a toll (generally a percentage on the winnings) for its use for gambling on games of chance. The exis-

tence of such houses was believed to be mainly responsible for the crimes attributable to gaming in general, and thus to be a source of danger to society. Under the law as it stood prior to the passing of this Act, keeping a common gaming-house was no offence, and hence private gambling was much more common than public gambling. The keepers of gaming houses depending on the gamblers for their livelihood would, in their own interest, induce others to indulge in gaming at the cost of lawful pursuits. The result was that these houses formed the favourite haunts of bad characters addicted to gaming who were driven to crimes such as theft and murder to make good their losses. &c. The Act therefore, in attempting to put down gaming as a cause of crime aims chiefly at the suppression of such houses where the business of gambling is localized. It is to be noted that the Act does not prohibit gaming in its entirety. Games of skill are not forbidden; nor games of chance provided they are played in a '*private house*' as distinguished from a '*common gaming house*'. A '*private house*' means any house whose owner or occupier gratuitously permits its use for gaming purposes. The Legislature intended to discourage gaming only in so far as it was believed to

tend to the injury and demoralisation of improvident persons. In this view, the main culprits were deemed to be those who allowed the use of their premises for gambling, in lieu of a fixed commission paid them by the gamblers. The heaviest penalty provided by the Act has, therefore, been annexed to the offence of keeping a common gaming-house. The gamblers come in for punishment only when they are found in such houses or when they indulge in gaming in places of public resort. And even then they are liable to a milder punishment than that imposable on the keepers of common gaming-houses. The Legislature has been particularly lenient in fixing punishment for those guilty of the offence of gaming in public places; the reason being that such an offence was believed not to be mainly responsible for the crimes generally imputable to gaming. This accounts for the inclusion in the Act of several provisions of more than ordinary strictness, solely directed against the keepers and frequenters of common gaming-houses. They are liable to an additional penalty if, when arrested, they refuse to disclose their true names and addresses. They are also subject to enhanced punishment if they repeatedly commit the offence of keeping a common gaming-house or of gamin

therein. Money found in a common gaming-house in course of a search under the Act is also forfeitable. The mere finding of instruments of gaming in a house raided under a warrant issued on information received, is sufficient to raise the presumption that the house is a common gaming-house, and that the persons found therein were there for the purpose of gaming. This artificial presumption permitted to be drawn from a set of certain purely executive functions constitutes the crux of the whole Act, and a departure from the settled principle of criminal law that the accused is to be deemed to be innocent unless and until his guilt is established by satisfactory evidence. Forsaking this principle for the sake of facility of prosecution, the Legislature has placed on the accused the burden of proving his innocence and relieved the prosecutor of the task of substantiating the accusation levelled against him. The accused has, no doubt, a right to rebut the presumption by showing the information on the strength of which the premises were raided to be false and incredible. But this right cannot be effectually exercised in as much as section 125 of the Indian Evidence Act protects the identity of the informer from disclosure. And this Act itself, although it enjoins a presumption in defiance of a

wholesome principle of criminal law, does not provide for such disclosure to be made to the accused who might, thus, be often greatly handicapped in his defence. In the interest of a fair trial and justice, such a provision is a desideratum. Its absence constitutes a defect in the Act; it amounts to an omission of a necessary safeguard against the malicious activity of unscrupulous persons who, actuated by sheer enmity, might feel prone to set the machinery of the Act in motion to the detriment of innocent persons. It is highly desirable that this defect be remedied by an early amendment of the Act. The stringency of the provisions above referred to should serve to disillusionize those who, labouring under a mistaken notion, might imagine the Act to have been framed in a spirit of half-heartedness.

The Act was, thus, the outcome of a desire to prevent gaming as a source of crime. The Indian Penal Code being silent on the subject, was considered defective, and this Act was deemed to be a measure removing the defect. The chances, however, are that the framers of that Code were too far-sighted to include therein provisions which could be hardly effective, in striking at the evil aimed at. It would indeed be difficult

to dispute that the Act, in spite of its activity for upwards of half a century, has failed to bring about the desired result. The method it adopted to meet the evil was an indirect one. The suppression of gaming was sought mainly in the abolition of common gaming-houses. The gamblers were to give up their evil habit because nobody would levy a charge for allowing them to gamble in his house. It would be unreasonable to suppose that the Legislature merely intended to put down the habit of charging a commission for the use of a house for gaming purposes and to leave the matter at that. If gambling was a harmless practice, surely, facilitating the same for an earning would be much more so; and it would be unnatural to discourage the latter and countenance the former. But whatever may have been the ultimate object of the Legislature, this is what the provisions of the Act amount to. Really speaking, the Act affords protection to a considerable class of gamblers, possibly because the Legislature regarded the habit of gaming too inveterate in those whom it did not like to touch. It seems difficult to place the gambler on a higher footing than the individual who makes a profit by providing him with a suitable spot for gaming and ministering to his comforts. Making money

constitutes the chief charm of gaming; and if the practice of the latter in charging a percentage on the winnings is reprehensible, the former is equally, if not more, to blame for trying to enrich himself by gaming and running the risk of losing his all. At any rate, the earnings of the keeper of a gaming-house are a matter of certainty, those of the gambler a mere matter of chance. It is easily conceivable that penalizing gaming as such, would *ipso facto* bring about an appreciable reduction in the number of gaming-houses, even though it might not tend to their disappearance.

But the Act does not approach the private gambler directly. So long as he does not resort to a common gaming-house, he is safe. A contrary course might have hit hard respectable citizens who frequently indulge in the amusement of gaming in clubs. Be that as it may, the Act far from exercising an effective check on the passion for gambling, may even be supposed to have fostered a liking for it. A partial piece of legislation could hardly be conducive to a better result. In the United Provinces, at least, it was discovered to have failed to produce the desired effect. Gaming instead of being checked had prevailed to a much greater extent and in certain

new forms too. To meet this state of things, the Local Legislature had to amend the Act thrice within a space of less than a decade. Section 2 of the Act empowers the Local Government to extend, by means of a notification published in three successive issues of the Gazette, sections dealing with keepers and frequenters of common gaming-houses to any city, town, suburb, or railway station-house or place within three miles of a railway station-house. With these restrictions, it was not possible to extend these sections to villages more than three miles away from a railway station-house. Local Act No. V of 1919 was, therefore, passed enabling the Governor of the United Provinces to extend, by a notification published once only in the official Gazette, these sections to any area within the United Provinces.

Another local amendment was necessitated by a new form of gaming (generally known as '*Satta*' betting) having sprung up in Muttra and other neighbouring towns towards the close of the last century. Bookmakers kept regular establishments open to the public for such betting. The public were invited to guess what would be the last figure or the last two figures of the average price at which a chest of opium

might be sold at the Government sales in Calcutta during a certain period, and to lay 'bets on' such figures. The result of the bets was determined by means of a telegram received from Calcutta after the sale; the successful bettors receiving a certain times the amount of their stakes according to previous agreement. Subsequently, in a number of other districts, similar betting on the figures of the Bombay price of cotton came into vogue. This form of gaming, having become exceedingly popular with the poor classes, led to an increase in crime. About the year 1916, it was found to have assumed alarming proportions calling for legislative interference. The Act, as it stood, was inadequate to cope with the situation, and consequently it was amended by the U. P. Act No. I of 1917. The definition of the term 'common-gaming house' has been recast. 'Gaming' has been defined so as to include every kind of betting, except betting on horse-races under certain conditions. The expression 'instruments of gaming' has been defined so as to extend to any document used as a register of any gaming, and is no longer confined to articles such as cards, dice, etc. Mere betting in public streets has been made penal. These amendments have made *Satta* or similar form of betting

carried on whether inside a house or in a public place, an offence. Another result brought about by these changes, has been the curtailment if not the abolition of the unconditional exemption formerly existing in favour of games of skill played in public places (For text of the former s. 13, *See* p. 180.). No doubt, the Legislature has inserted a new section (section 13-A. *See* p. 240) with a view to restore the old law on the point which had ceased to exist in consequence of the change introduced in the wording of section 13. But section 13-A, unless extended to any place by the Local Government is inoperative; whereas section 13 came into force throughout the United Provinces immediately with the passing of the Act, and does not require any such extension at all (*vide* s. 2). Of course, an amendment of section 2 by the insertion of the figure '13-A' after the words "section 13" in that section would have preserved the old law on the point. This seems to have been an unforeseen result; howbeit, under the law as it stands at present, games of skill are as much prohibited in the United Provinces as games of chance, except where section 13-A has been enforced by the Governor in exercise of the powers conferred by section 2.

But even after these far-reaching changes, a person keeping a common gaming-house for *Satta* or similar form of betting, could not be successfully prosecuted unless it were shown that he made profit by the use of his house for this description of gaming. The words "profit or gain...otherwise howsoever" having been retained in the definition of the term "common gaming-house" even after its amendment by the Local Act No. I of 1917, evidence showing that such profit accrued to him was still necessary. And it was felt that in cases relating to this sort of gaming, persons really guilty could often escape punishment from paucity of evidence on the point. To obviate this difficulty, the definition of the term 'common gaming-house' was once more amended by the U. P. Act No. I of 1925. Now, after this amendment, it is no longer necessary to prove at all, in such cases, that any profit accrued to an alleged keeper of a common gaming-house.

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C. W. N.—Calcutta Weekly Notes.
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 " " Zahur Shah,
 Q-E. v. Allan, 2.
 " " Ah "

V of 1897. For statement of Objects and Reasons see Gazette of India, 1866, p. 976.

For the Select Committee's Report see Gazette of India, 1867, Supplement, p. 44.

For Proceedings in Council, See Gazette of India, 1866 (p. 662), and 1867 (pp. 48 & 52).

Preamble.—The preamble is meant to be the key to the enactment, hence it is permissible to look at it in construing an Act, (*Queen Empress v. Inderjit*, 11 A. 262; *Waghelin v. Skeikh Mosluddin*, 11 B. 551.). It may be referred to, to restrain generality of enacting clauses, or to explain it if doubtful, see *Uda. v. Imamuddin*, 12 A. 90; *Alanga Monjari. v. Sonamoni*, 8 C. 639. But where the enacting words are clear and plain, they ought to be given effect to without being controlled by the preamble (*Queen-Empress v. Allan*, 24 M. 195; *Gareeboola v. Mohunlal*, 7 C. 127; *Q-E. v. Inderjit*, 11 A. 262.). Nor can a preamble extend the provisions (*Kadir. v. Bhamoni*, 14 A. 154.). If the enacting words of a statute be strong enough, they may be carried beyond the preamble (*Daimoddee v. Kaim*, 5 C. 303; *Vithol v. Govind*, 22 B. 321.).

Inaccuracy.—If there is an inaccuracy in an enactment, the court should carry out true intention of the Legislature (*11 M. 253.*). For an instance see S. 17 of the Act, and Notes under ‘S. 61 of the Code of Criminal Procedure.’

Marginal Notes.—These cannot be referred to in construing sections of an enactment (*Balraj v. Jagat Pal, 26 A. 393.*).

Statement of object and reasons.—Statement of Objects and Reasons during the passage of an Act, cannot be referred to in construing its provisions (*1. L.B.R. 231; 22 C. 788.*).

North Western Provinces.—The North Western Provinces, and the Province of Oudh are now together known as the ‘United Provinces of Agra and Oudh’. See Gazette of India, 1902, Pt. I, P. 228. See, United Provinces (Designation) Act, VII of 1902. Also see S. 29 of the U.P. General Clauses Act, I of 1904.

Lieutenant Governor.—The Province of Oudh is not administered by a Chief Commissioner now. The United Provinces of Agra and Oudh, the Punjab and the Central Provinces are now each under a separate Governor. See Govern-

ment of India Act, 1919. See also section 31 of the General Clauses Act, X of 1897.

Extent of the Act.—This Act is in force in the Punjab, the Central Provinces and in the United Provinces of Agra and Oudh (as amended by U. P. Acts, I of 1917, V. of 1919, and I of 1925.).

It has also been applied to :—

Assam.—See Notification No. 1244, dated the 26th November, 1880, Gazette of India, 1880, Pt. I. p. 666.

British Baluchistan.—See the British Baluchistan Laws Regulation, I of 1890, section 3 (1).

The Agency Territories.—See the Baluchistan Agency Laws, 1890, S. 4 (1).

Coorg.—See Notification No. 761, dated June 19, 1878, Gazette of India, 1880, Pt. I, p. 373.

Tarai Parganas.—See Notification No. 1554, dated 22nd September 1876, Gazette of India, 1876, p. 505; and N.W.P. Gazette, 1876, p. 1278.

Tract of land ceded to the British Government in the year 1863, and lying between the Railway Station at Sutna and the eastern boundry of the Jubbulpore district, by Notification under the Scheduled Districts Act, XIV of 1874.

The following towns of Ajmere and Merwara, namely, Ajmere, Bhinae, Kekree, Khurwali, Mosuda Nuseerabad, Nyanagar, Pisangun. Pokar, Ramsur, Sawur, and Srinagar, by Notification of the Lieutenant Governor of United Provinces of Agra and Oudh, No. 346 A. dated the 8th June, 1867. See N. W. P. Gazettee, dated July 31, 1867 p. 511.

This Act was in force in Burma, but was repealed there by Burma Gambling Act I of 1899, section 2. See Appendix.

"And the Central Provinces".—These words were substituted for "the Central Provinces and British Burma" by the Repealing and Amending Act. I of 1903.

I. In this Act—

Interpretation clause. "*Lieutenant-Governor*" means "*Lieutenant-Governor.*" *the Lieutenant-Governor of the United Provinces of Agra and Oudh or of the Punjab, as the case may be :*

"*Chief Commissioner.*" "*Chief Commissioner*" means *Chief Commissioner of the Central Provinces or of the North-West Frontier Province, as the case may be :*

"Common gaming
house."

"Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever.

Number. Gender. *Rep. by Act XVII of 1914, S. 3, and Second Schedule.*

(NOTE.—For the United Provinces, See under 'U. P. Amendment' *infra*.)

NOTES.

Nature and Construction of the Act.—This enactment is a penal law, and of a very stringent character, and so its provisions are to be very closely interpreted; and are not to be extended so as to meet cases which do not strictly fall within them (*E. v. Nga So, L. B. R., 1872-1892, 53; E. v. Nga Tu, L. B. R. 1872-92, p. 86.*). It interferes with the liberty of the subject, and departs from the ordinary rules of evidence in that it places the burden of proof on the accused.

It must therefore be strictly construed, (*Q-E. v. Govind*, 16 B. 283, F. B.); also see 28. B. 129.

A penal enactment ought to be construed strictly and nothing which is not clearly and intelligibly set forth therein ought to be held as coming within it (*E. v. Kola*, 8 C. 214; *Zeam-uddin, v. E.*, 28 C. 508; *E. v. Venkanna*, 26 M. 470; *Cheda v. E.*, 8 C. W. N. 349.). The language, in case of obscurity or ambiguity, must be construed in a manner most favourable to the liberty of the subject, (*Regina v. Bhisti*, 1 B. 308; *Q. E. v. Govind*, 16 B. 283 F.B.).

There is great danger that the Gambling law as it stands may be made a means by unscrupulous persons of harrasing and oppressing persons on charges of gambling, and Magistrates should be careful to see that precautions are used to avoid unnecessary hardship, and to follow strictly the procedure laid down by law (*Queen Empress v. Nga Lu Gyi*, 1. L. B. R. 49.).

Where there is a patent inaccuracy in an Act, the court ought to eliminate it and execute the true intention of the Legislature (*Jennings v. President*, 11 M. 253.). For an instance, see

section 17 of this Act, and Notes thereto under the heading "Section 61 of the Code of Cr. Procedure."

The provisions of an enactment cannot be interpreted with reference to the proceedings of the Legislature held in course of passing it, (*Cr. v. Nga Yeik*, 1 *L. B.R.* 231). See also 22 *C.* 788.

Lieutenant-Governor.—The United Provinces of Agra and Oudh are now placed under a Governor. The Punjab and the Central Provinces are now each governed by a Governor. See, Government of India Act, 1919. See also S. 31 of the General Clauses Act, X of 1897.

Common Gaming House.—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, and it makes no difference that the house was not open to all who might desire to use the same for gaming (*In re Krishnaswami Naidu*, 47 *M.* 426, 77 *I. C.* 303.).

This definition of a common gaming house has been modified by the United Provinces Public Gambling (Amendment) Acts, I of 1917, and I of 1925. See Appendix. For the combined effect of

these two amending Acts on this section, see under "U.P. Amendment" *infra*. Of course, the amendments affect only the United Provinces of Agra and Oudh ; they are of no force in other provinces to which this Act applies. In the latter provinces, therefore, the definition of "common gaming-house" given in Act III of 1867 is to be observed.

House.—This covers both private and public houses. See *E. v. Po Yin*, 9 I. C. 450.

Walled enclosure.—A garden enclosed with a hedge or ditch, where gambling takes place, cannot be called a common gaming-house (*Abbi v. Queen-Empress*, 14 P. R. 1896 Cr.).

Place.—It should be enclosed ; a vacant site cannot be called a common gaming-house (*Q. E. v. Jagannaya Kuly*, 18 M. 46.). It should not be a public street, place or thoroughfare ; gambling in a public street, place or thoroughfare is punishable under section 13. Section 4 penalises gambling in a common gaming-house. Gambling in a private house is no offence (*Q. v. Khyaroo*, 2. N. W. P. 289.).

The term includes a small open space surrounded by houses on all sides, and accessible by

a narrow lane having a sign-board pointing to the space (*E. v. Fattu Md.*, 37 B. 651.).

Round the sides of a bullock-run in the shape of a semicircle was raised a low wall of loose bricks, and within the shelter of this wall of loose bricks gambling took place; it was held that the spot where gambling had taken place was a 'place' within the meaning of this section (*E. v. Mian Din*, 13 A. L. J. 1070; 31 I. C. 1002; 16 Cr. L. J. 826.).

Where a number of persons were charged with gambling in a tent on the banks of the Ganges where they had gone temporarily for bathing and were convicted, the conviction was set aside (*Banwari Lal v. E.*, 50 I. C. 351; 20 Cr. L. J. 303.).

Distinguished from 'place' in S. 13 :—The meaning of the word 'place' in this section is different from its meaning in section 13 of this Act. In section 1 the word signifies a private place, whereas in section 13 it means a 'public' place. The difference, however, between a 'public' place and a 'private' place does not depend on the question whether the 'place' is public

property or is owned by a private individual (*K-E. v. Bashir*, 9 O. L. J. 288; *Tulsi Das v. E.*, 22 A.L.J. 741.). Under section 13, a place may be the private property of an individual and still it may be *public*, provided it is open to the public or is used by the public as a matter of fact (*K-E v. Bashir*, 9 O. L. J. 288; 1922 A. I. R. Oudh, 275; 68 I. C. 613.). See also *Vithu v. Emperor*, 9 N. L. R. 164; 21 I. C. 910. 'Public place' in section 13 means a place to which the public have lawful access by right, permission, usage, or otherwise (*Sabimiya v. Emperor* 81 I.C. 897; 25 Cr. L. J. 1073.). On the other hand, if it is not frequented by the public nor is it dedicated to be so used, it is not a public place, even though it is the property of the Government (*Matwala Ram v. Crown*, 3 L. L. J. 53) Property belonging to the state is not necessarily public within the meaning of section 13 of this Act; it may be in the possession of a private individual and may be used as a common gaming-house. Section 2 of this Act clearly indicates that a Railway station-house (which may be the property of the Government) can be used as a common gaming-house.

A place cannot be said to be a 'private place'

within the meaning of section 1 merely because it is in the possession of a private individual. If it is frequented by the public without interference or refusal, it may be a 'public place' irrespective of their right to go there and in such a case gambling there would be punishable as gambling in a public place within the meaning of section 13 (*Sukhnandan Singh v. Emperor*, 20 A.L.J. 80; 65 I. C. 419.) In *King-Emperor v. Lalaji*, 68 I. C. 611; 25 O. C. 114, a foot-path running through a *private grove* and used by the public was held to be a public place as contemplated by section 13. Nor does the mere fact that a place is not the subject of private possession necessarily convert it into a public place. In a Punjab case, *Matwala Ram v. Crown*, 3 L. L. J. 53., the bank of a canal which was neither frequented by the public nor was allowed by the Government to be used by the public, was held not to be a public place, and a conviction under section 13 for gaming there was quashed. A Railway station-house over a Government Railway line is in possession of the Government, and may yet be used as a common gaming-house so that it cannot be designated as a *public place* for the purposes.

of section 13 of this Act. Such a possibility is clearly contemplated by the provisions contained in section 2 of this Act.

Nor, again, does a place become 'public' merely by reason of the publicity of its situation. Gambling in an open space under a tamarind tree close to public roads and not fenced in any way, was held not to amount to gambling in a public place, in as much as the place was neither open to the public nor used by them (*K.E. v Bashir*, 1922 *A.I.R. Oudh*, 273.). Gambling in a place exposed to public view and close to a public street but not forming part of it, was held to be no offence under section 13, (*Moula v. Emperor*, 56 *I.C.* 672; 21 *Cr. L.J.* 512; 1920 *P.L.R.* 104.). The proximity of a private place to a public street cannot always be regarded as a true criterion of the public nature of a place (*Sabimriya v. Emperor*, 81 *I.C.* 897; 25 *Cr. L.J.* 1073.). A public place is one which is open to the public, that is, to which the public have lawful access by right, permission, usage or otherwise (*Ibid*). Also see *K-E. v. Bashir*, 9 *O. L. J.* 288.

But under this Act, a place though open to the public, is not 'public' simply on that account.

'Public place' in section 13 of this Act is to be interpreted in connection with the expressions, 'public street' and 'public thoroughfare' with which it is joined (*Vithu v. Emperor*, 21 I. C. 910; 9 N.L.R. 164.). In India, the definition of 'public place' as one where the public go whether they have a right or not has been adopted (*Public Prosecutor v. Musa Sakaram*, 40 M. 556; 36 I. C. 839.). But the place must bear the same character as a street or thoroughfare (*Lu Gale v. Emperor*, 4 Bur. L. T. 71; 10 I. C. 775.); otherwise it would be very difficult to draw a line between an offence under section 4 (gaming in a common gaming house) and the offence of gambling in a public place under section 13. For instance, a hotel is a place open to the members of the public; and if the hotel-keeper permits gambling in one of its rooms, can the gamblers be said to be gaming in a 'public place' within the meaning of section 13. It cannot, because although the place is accessible to the public, it is not one which partakes of the nature of a public street or thoroughfare. See 30. B. 348; and 6 C.W.N. 33. The question whether a place is a public place depends on the character of the place itself and

the use actually made of it. In section 1, the word 'place' should be taken to mean a place of the kind or nature indicated by the preceding words 'house', 'walled enclosure,' and 'room.'

It would thus appear that a public place under section 13 of this Act means a place to which the public have access and which is akin to a public street or thoroughfare; whereas the term 'place' in the definition of 'common gaming-house' applies to an enclosed or restricted place such as a house, walled enclosure, or room, which may or may not be usually open to the public at large.

The decision, however, in the case *Tulsee Das v. King-Emperor*, All 5 L. R. 149; 22 A. L. J. 149 and the remarks made therein militate against the view set forth above. In this case, the distinction between a 'public' and a 'private' place for the purposes of this Act has been held to be determined solely by the question whether gaming in a particular place does or does not constitute a public injury to morals. A private house, entry to which is restricted to a select few who indulge there in gaming, such gaming not being perceivable by the public, is not a public place because in such gaming there is no risk of public

injury to moral standards. But if the gaming in the house could be seen by the public, or if the house so used is open to the public at large, there is then a public injury to moral standards and the house would be a public place within the meaning of section 13. In other words, the use to which a place is put alone determines whether it is or is not a 'public' place under the Act.

With due deference it is submitted that this view does not appear to accord with the intention of the Legislature as evidenced by the use of the words 'house', 'walled enclosure' and 'room' before 'place' in section 1 in the definition of 'common gaming-house', and of the words 'street' and 'throughfare' in connection with 'place' in section 13. Further, if a private house becomes a 'public place' by the mere fact that the public is allowed unrestricted access thereto for gaming purposes, or that the gaming carried on therein by a select few is perceivable by all and sundry, then those found gambling in such a house are no doubt punishable under section 13 for 'gaming in a public place'. But suppose the owner of the house is at the same time found charging commission for such use of the house for gaming

purposes. Under what section is he liable? It would be an anomaly to convict him of 'keeping a common gaming-house' within the meaning of section 3 when those found gambling therein have been charged with 'gambling in a public place'—an offence under section 13—and not with 'gambling in a common gaming-house'—an offence under section 4. Nor is he guilty of an offence under section 13. So in most cases he will go free for his share of the crime,—a result that would not be in keeping with the policy of the Legislature in framing the Act.

Instruments of gaming.—The Act does not define this term. Nor does it define 'gaming'. 'Gaming' as defined in the United Provinces Act I of 1917, and the Bengal and the Bombay Gambling Acts, includes wagering or betting. But in the absence of any definition in this Act (III of 1867) the word 'gaming' should be understood in its ordinary sense. 'Gaming' is playing at any game, sport, pastime or exercise lawful or unlawful, for money or other valuable thing which is taken on the result of the game, that is, which is to be lost or won according to the success or failure of the person who had staked. The play is carried out for the purpose of ascertaining the result upon which the eventual right to the stake.

depends. The players take an active part in bringing about the result which however is uncertain. Wharton in his Law Lexicon defines 'gaming' as the "art or practice of playing and following up any game, particularly those of chance." According to Johnson a 'game' is a sport of any kind—a single match at play—a solemn contest. To game is 'to use cards, dice, billiards, or other instruments, according to certain rules, with a view to win money or other things waged upon the issue of the contest' (Imperial Dictionary). From this it is clear that a *contest* is an essential element of a 'game,' and an active participation of certain persons is also necessary.

1. 'Wagering' which includes 'betting' is making a contract on an unascertained event, past or future, by which the parties are to gain or lose according as the uncertainty is determined one way or the other. Here the parties have no pecuniary interest in the event other than that created by the contract. In 'betting' which is always on an uncertain event, there is no contest which is essential to 'gaming'. The betters have no hand in the happening of the event which comes off by an operation of nature. Pecuniary risk and the element of chance or uncertainty of result are common to 'gaming' and betting or wager-

ing. The difference depends not on the nature of the event on which the bet is made, but on the active participation in bringing about the determining event, which (active participation) is present in the former but not in the latter. Laying bets about an uncertain event which the bettors cannot prevent or bring about is not 'playing a game' in any reasonable sense of that expression.

Thus, 'gaming' by itself, is distinct from 'betting' or 'wagering'. And unless this difference between *gaming* and *betting* has been bridged over by any special provision of law (as for example, section 2 of the U. P. Public Gambling Amendment Act, I of 1917), *betting* cannot be said to amount to *gaming* and punished as such. Act III of 1867 is directed against something which those wagering, themselves bring about for the purpose of settling the bet. That something must be a *game*, it must be played with some instrument, the play being carried out for the purpose of ascertaining the result upon which the eventual right to the stake depends. The event whereon the bet is made must be a *game* played by those who bet before 'betting' can be called 'gaming'. If the event is brought about, solely for the purpose of being betted about, betting on

it is 'gaming', otherwise it is not. See, *Hari Singh v. Jadunandan Singh*, 31 C. 542; 8 C.W.N. 458; *Ram Partap Nemani v. King Emperor*, 39 C. 968; 16 I.C. 171; *Gajju v. Emperor*, 14 N.L.R. 137; 47 I.C. 433; 19 Cr. L.J. 917; *Queen Empress v. Narottamdas Motiram*, 13 B. 681.

The expression 'instrument of gaming' means an implement devised or intended for gaming (*Q-E. v. Sit Tun*, L. B. R. 1872-92, 155; *E v. Vithal*, 6 B. 19.). But *gaming* being different from *betting* or *wagering*, the term 'instruments of gaming' in this Act is confined to articles actually used as a means for carrying on a game. It includes only the actual instruments of gaming. Instruments of gaming must be *ejusdem generis* with cards, dice or counters (*Gajju v. Emperor*, 14 N. L. R. 137; 47 I. C. 433.). Betting on a horse-race was held not to be playing a game, the slips of paper whereon the bets were recorded not being instruments of gaming. See, *Emperor v. Vithal Das*, 19 Bom. L. R. 830; 42 I. C. 910. The term 'instruments of gaming' as defined by the U. P. Act I of 1917, includes any articles used as a means or appurtenance of or for the purpose of carrying on or facilitating gaming. The same is the definition given in the Bengal Gambling Act, 1867. In the Bombay Prevention of

Gambling Act, IV of 1887, this expression has been defined as including any article used as a subject or means of gaming. Under these Local Acts the term 'gaming' includes betting or wagering. It will thus be seen that any article constituting an instrument of gaming within the meaning of these enactments is not necessarily such an instrument under this Imperial Act (III of 1867) because the term 'gaming' does not cover betting or wagering. Therefore much of the case law under these local Acts has no bearing on the point under this Act.

What are instruments of gaming.—Coins are not instruments of gaming (*Queen Empress v. Sit Tun*, L. B. R. 1872-92, 155, *Emperor v. Vithal*, 6 B. 19, *Queen Empress v. Govind* 16 B. 283, *Queen Empress v. Mukund Ram*, 25 C. 432.) See also 26 A. 270, 18 P. R. 1891 Cr. But the words "gaming with cards, dice, counters, money or other instruments of gaming" in section 4 indicate that 'coins' may be such instruments under this Act. If coins are used as instruments of gaming, they are such instruments (*K. E. v. Nga Thu Daw*, 2 L. B. R. 60; *Amrit Singh v. K. E.* 5 C. W. N. 503.). Evidence is necessary to prove that these were actually used as a means of gaming.

'Cowries'—are not instruments of gaming, (*Q. E. v. Bharsani*, 18 A. 23 ; 1895 A. W. N. 139 ; *Ganda v. Empress*, 3 F. R. 1896 Cr; *E. v Mt. Kashi*, 6 C.P.L.R. 17. Cr.). But 'Cowries' if actually so used, are instruments of gaming (*Q. E. v. Bala Misra*, 19 A. 311; 1897 A. W. N. 117 ; *Bhaggi Lall v. Emperor* 18 A. L. J. 562 ; 21 Cr. L. J. 438 ; 56 J. C. 230.). Thus the mere finding of coins or 'cowrise' in a house is not sufficient to raise the presumption that it is a common gaming house (See S. 6); there must be further evidence that the same were used as actual instruments of gaming.

'Lottery tickets' by reference to which it is to be decided whether the holder thereof wins the whole or any part of any stakes, constitute instruments of gaming similar to cards (12 W. R. 34 Cr.). But in *Gajju v. Emperor*, this case was dissented from and 'lottery tickets' were held not to be instruments of gaming under this Act (14 N. L. R. 137; 47 J. C. 433; 19 Cr. L. J. 917.).

Are kept or used for the profit or gain.—The actual 'gain' necessary. instruments or gaming should be either kept or used in the premises before the premises can be called a common gaming house.

And they should be kept or used for the profit or gain of the person owning or occupying the premises. The evidence must show that he made profit or gain out of the gaming which took place inside the premises. In the absence of evidence showing that profit was so made, a conviction for keeping a common gaming house under section 3 cannot be based on the mere possibility of profit having been made (*Raghunath v. Emperor*, 16 A. L. J. 760 ; 41 I. C. 810 ; 19 Cr. L. J. 958.). It must be established that the owner or occupier takes a fixed commission which is irrespective of the result of the gaming, or at the outside, that he manipulates the conditions in such a manner that he cannot possibly lose. The words 'for the profit or gain of' cannot be read as meaning 'for the purpose of carrying on the gaming' because such an interpretation would make the words a meaningless redundancy. Moreover the meaning of these words is indicated by the succeeding words 'by way of chargeotherwise howsoever'. Thus the mere fact that certain articles which were instruments of gaming were found in a shop does not make the shop a common gaming-house, if in the circumstances of the case it cannot be said that the instruments were kept or used for the profit or gain of the occupier of

the shop (*Lakhi Ram v. Emperor*, 20 A. L. J. 218.). See also, *Durga Prasad v. Emperor*, 21 A. L. J. 36.

Bombay view. This view was dissented from in the Bombay case, *Emperor v. Dattatraya Shankar Paranjpe*, 47 B. 960, in which *actual* accrual of profit to the owner or occupier has been held not to be essential. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place i.e., where the person keeping or using the house knows that profit or gain will in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the *probably and expected* result of the game itself and if that is the purpose of keeping or using the instruments, it is sufficient to bring the case within the scope of the definition.

Thus according to the view of the Bombay High Court the words 'for the profit or gain' mean 'for the purpose of' or 'with a view to' profit or gain, whereas the High Court of Allahabad has construed the words to signify accrual of actual profit to the owner or occupier.

--All these cases were considered and the Allahabad view, habad view affirmed in the Full Bench case *Atma Ram v. King Emperor, All. 5 L. R. 33 Cr; 22 A. L. J. 249*, recently decided by the High Court of Allahabad. It was held that the words "used for the profit or gain of the person owning the house" must be strictly proved by evidence. In this case their Lordships, however, felt inclined in favour of the above view of the High Court of Bombay. The Hon'ble Sir Grimwood Mears, Kt., Chief Justice, who delivered the judgement of the Bench said:—

"It will thus be seen that although the views of all the Judges of this Court may not agree, three Judges have definitely ruled that the words 'used for the profit or gain of the person owning the house' must be strictly proved by evidence.....It seems to us that a very slight amendment in the wording of the section would remove all difficulties in future. The words now are 'instruments of gaming are kept or used for the profit or gain of the person owning'. If instead of the word 'for' we substitute 'with a view to' we think there can be no difficulty in arriving at a conclusion as to whether a given case falls within the section. The words would then be 'instruments of gaming:

are kept or used with a view to the profit or gain of the person owning'.....We direct that a copy of this judgment be transmitted to the Local Government for their consideration of the amendment of the Act suggested by us."

This case was decided on the 24th January, 1924. The United Provinces Public Gambling (Amendment) Act, I of 1925, passed subsequently, has altered the definition of 'common gaming house' so far as gaming in the *Satta* or similar form is concerned. For the words "for the profit or gain of the person owning... ..otherwise howsoever" as they stood in the definition given in the Local Act, I of 1917, the words 'for such gaming' have been substituted so that in the United Provinces, in cases relating to gaming in the *Satta* or similar form, no question of profit or gain can arise now. See Notes under 'U. P. Amendment' *infra*. Also see Appendix. In *Nathu Mal v. Emperor*, 23 A. L. J. 185,¹ the accused were held guilty of keeping a common gaming house, because the ultimate result of gaming on figures of price of opium would in all probability be a gain to the accused. 11-

Gambling in private houses, no offence. Gambling in a *private house* constitutes no offence under the Act; gambling becomes punishable as an offence only

when it is carried on in a 'common gaming house' or in a 'public place' (*Q-E v. Sheo Sh. Singh*, 3 *N.W.P.J.*; and *Q. v. Sajjad Ali*, 3. *N.W.P.* 134; *Q-E v. Niaz Ahmad*, S. C. 203 *Oudh*; *E. v. Khyroo*, 2 *N. W. P.* 289; *E. v. Umar Khan*, 8 *I. C.* 1127.) Playing cards in a private house is not an offence punishable by law (*L. B. R.* 1872-92, 57 and 59.) It is not *per se* an offence for any man to allow gambling to be carried on in his house whether openly or secretly, or even to lend money to people to gamble in his house (*Q-E v. Nga Ya Po*, *U. B. R.* 1897-1901, *Vol. I*, 224.).

Difference between
'private house' and 'Common gaming house'.

A common gaming house means a house in which instruments of gaming are kept or used for the profit or gain of its owner or occupier, whether by way of a charge for the use of the instruments of gaming or of the house, or otherwise howsoever. A house is not a common gaming house merely because gambling is carried on in it; the gambling must be carried on for the profit of the owner or occupier of the house, and then alone the house can be called a common gaming house. So where a number of accused persons were found with 'cowries' on the first night of the

festival in the house of another accused, and it was not proved that there was any idea of paying a percentage ('Nal,' table-money or 'Gitti' as it is generally called; See, *Nemi Chand v. E*, 22 *Cr. L. J.* 498.) on the winnings to the latter, or of his deriving any sort or kind of profit from the use which was being made of his room, or that the room had previously been used for the purpose of gaming, it was held that the accused could not be convicted of any offence (*Jai Narain v. Emperor*, 50 *I. C.* 171; 20 *Cr. L. J.* 283.).

For a conviction of a person for keeping a common gaming house it is necessary for the prosecution to prove not only that he owned or occupied the house and that instruments of gaming were kept or used in it, but that they were kept or used for the profit or gain of *that person* (*Raghunath v. Emperor*, 16 *A. L. J.* 760; 47 *I. C.* 810; 19 *Cr. L. J.* 958.).

Gambling in a friend's house who entertains no idea of taking a commission or making a profit does not make the house a common gaming house (*Ram Shankar v. Emperor*, 20 *O. C.* 4; 39 *I. C.* 334; 18 *Cr. L. J.* 494.). Also see, 12 *Bur. L. T.* 16; 21 *Cr. L. J.* 4; 54 *I. C.* 52. Where the accused who were out on a picnic party, were found playing for small stakes in a house rented

and occupied by them temporarily for the occasion, it was held that under the circumstances the house was not a common gaming house (19 *Bom. L. R.* 693; 41 *I. C.* 997.).

Whose gain necessary. The profit or gain must accrue to the person owning, occupying, using or keeping the house (*Jai Narain v. E.*, 50 *I. C.* 171.). The owner or occupier must derive profit or gain from the gambling (*Crown v. Chunnimal*, 19 *P. R.* 1871 *Cr.*). The credible information which the police officer ought first to obtain before entering any premises under this act (See S. 5) must show that gambling has been carried on for the profit of the owner or occupier, and there ought to be evidence showing how a toll, if any, was levied. The mere fact that the gamblers set aside small sums for the remuneration of those who ministered to their comforts in the way of supplying drink or other refreshments does not show that such payments represent any advantage whatsoever to the owner or occupier of the premises (*Nemichand v. Emperor*, 62 *I. C.* 322; 22 *Cr. L. J.* 498.).

1. Where the accused who was not the owner of the house, merely received on a single occasion a sum of money from one of the players or from

the winner, that by itself was held to be insufficient to prove any offence, (*Nga San v. Emperor*, A. I. R. 1923, Rang. 144; 75 I. C. 357.).

Where the business premises of a firm were at night left in charge of Durwans who used the same for the purpose of gambling for months together to their own profit, it was held that the premises could not be regarded as a common gaming house (*Mahesh Narain v. Emperor*, 11 C. W. N. 972; 6 Cr. L. J. 228.).

In a Burma case *Htaung v. King-Emperor*, 24 I. C. 835; 15 Cr. L. J. 523., it was held that even though the profits arising out of gaming in a club, were devoted solely to the club premises, it might still constitute a common gaming house.

Whether by way of charge.....or otherwise howsoever.—The owner or occupier may by way of profit charge something for the use of the instruments of gaming (of which he may or may not be the owner) or for accomodating the gamblers in his house for gaming. But it is not necessary that his profits should be derived only in this or similar way. He may make profit in any other way whatsoever. The mere fact however, that he himself joins the game and wins fairly will not make the house a common gaming house,

unless he charges something for the use of the house or the instruments, or the game is played unfairly to his advantage, or the odds are always in his favour. See, *Emperor v. Khyroo*, 2 N.W. P. 289; *Queen v. Sheo Shanker Singh*, 3 N.W. P. 1; *Queen v. Sajjad Ali*, 3 N. W. P. 134. The words 'or otherwise howsoever' cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner *ejusdem generis* with what precedes those words. The source of profit may be of a different kind or nature from the charge for the use of the house or instruments of gaming; the profit may be derived from the game itself. The words are wide enough to include any means or source of profit or gain. The accused played in a house a game in which there were enormous odds for them to win. It was held that the profit so made was covered by the words, and that the house occupied by the accused was a common gaming house. So long as gambling is carried on to the profit of the owner or occupier, it is immaterial whether he does or does not take part in the game itself (*Abdul Sattar v. Emperor*, 27 A. 567; 2 A. L. J. 414; 1905 A. W. N. 106.). The fact that the owner of house is also one of the gamblers, is no reason why

should not be regarded as keeping a common gaming house within the meaning of section 3 of this Act. (Ibid.).

Where the owner of a house made bets with reference to correct guessing of the digits of the price of opium, and charged half anna a rupee as commission from the winners, such commission was held not to be profit or gain within the Act, as it amounted to no more than taking a discount on the odds he laid (*Durga Pershad v. Emperor*, 21 A. L. J. 36.).

Q.—Do the premises of a dealer who derives profit solely by sale to the public, of the instruments of gaming, for instance, packs of cards kept therein, constitute a 'common gaming house'? If so, the result, to say the least, would be simply startling.

Definition of 'common gaming house' too wide. The words 'kept or used' indicate that merely keeping the instruments of gaming for profit in a house is sufficient to convert the house into a 'common gaming house'; actual use of the instruments is not assential. And the words 'or otherwise howsoever' would seem to be too wide to exclude profit made by sale. The definition of common gaming house, as it stands, does not elucidate the

signification of the word 'common'; nor does it fully bring out the idea underlying the term 'gaming'. The form of the definition was considered to be 'very singular' in the Allahabad case, *Atma Ram, v. Emperor*, All 5 L. R. 33; 22 A. L. J. 247. Doubt was also expressed as to the aptness and sufficiency of its language. The definition in the Burma Gambling Act I of 1899 (see Appendix), appears to be more reasonable; there the words used are "or otherwise howsoever for gaming purposes" which exclude the possibility of a house so used, being treated as a 'common gaming house'.

U. P. Amendment.

S. I

NOTES.

Section I of (Imperial) Act III of 1867, in its application to the United provinces of Agra and Oudh, has been modified by the U. P. Acts I of 1917 and I of 1925 (See Appendix). The effect of these two amending Acts, so far as it relates to this section, is the substitution of the following for the definition of the term 'Common gaming-house':—

“Gaming” includes wagering or betting, except wagering or betting upon a horse race, when such wagering or betting takes place—

(a) on the day on which such race is to run, and

(b) in an enclosure which the stewards controlling such race have with the sanction of the Local Government set apart for the purpose, but does not include a lottery;

‘Instruments of gaming’ includes any articles used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming;

‘Common gaming house’ means :—

(1) In the case of gaming on the digits of the sale price of any commodity, for example, opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles, or on the occurrence or non-occurrence of any natural event, for example, rainfall or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which instruments of gaming are kept or used for such gaming ;

(2) In the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which

any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instruments, or otherwise howsoever.

Gaming.—This term has not been defined in Act III of 1867. The definition given in the United Provinces (Amendment) Act I of 1917 is not exhaustive. It merely indicates that 'wagering' and 'betting' are included in the term, while 'lottery', and wagering or betting on horse race (under certain conditions) are excluded from it. Similarly in the Bengal Act II of 1867, and the Bombay Act IV of 1887, the term includes 'wagering' or 'betting'. 'Gaming' and 'gambling' are synonymous terms except that the latter is suggestive of a practice more reprehensible from frequent indulgence.

Difference between 'Gaming' means playing for gaming, 'wagering, & betting.' money. It is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing which is taken on the result of the game, that is, which is to be lost or won according to the success or

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(b) in an enclosure which the stewards controlling such race have with the sanction of the Local Government set apart for the purpose, but does not include a lottery;

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any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instruments, or otherwise howsoever.

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failure of the person who had staked. Here the players take an active part in bringing about the result which however is uncertain. In 'betting' which is always on an uncertain event, there is no contest. The betters have no hand in the happening of the event which comes off by an operation of nature. 'Wagering', which includes 'betting', is making a contract on an unascertained event, past or future, by which the parties are to gain or lose, according as the uncertainty is determined one way or the other. Here the parties have no pecuniary interest in the event other than that created by contract. The element of chance, or uncertainty of result is common to 'gaming' as well as 'betting' or 'wagering'. The difference between 'gaming' and 'betting' depends not on the event on which the bet is made, but on the active participation in bringing about the determining event. This active participation is present in 'gaming' but not in 'betting' or 'wagering'. Thus, by itself, 'gaming' is distinct from 'betting' or 'wagering', but the Local Act (I of 1917) has widened the scope of the term so as to include *betting* or *wagering*. See *Ram Partap Nemi v. Emperor.*, 16 I. C. 171; 30 C. 968; 16 C. W. N. 858. See also, 47 I. C. 435 and 16 C. L. J. 250. Also see Notes on pp. 17 and 18.

'Wagering' or 'betting'.—See notes^{1 1 1 1} above. Both mean the same thing except that 'betting' is ordinarily applied to staking money on the result of sports.

Local Government.—That is, a Governor, or a Chief Commissioner.

Lottery.—A lottery is a game of chance in which the right to a prize is determined by the drawing or casting of lot. Its essence is the distribution of prizes by lot or chance. And it makes no difference that the distribution forms part of a genuine mercantile transaction (*Chakarbatty v. King-Emperor*, 33 I. C. 310; 17 Cr. L. J. 143). The principle underlying a lottery is that there should be distribution of prizes determined solely by chance. This does not mean that an actual distribution of prizes should necessarily be the result of a lottery. What is essential is that there should be a scheme of distribution of a prize or prizes to be determined solely by chance, and if chance so decrees that no prize is to be distributed to the adventurers and the stakes are all to be appropriated by the organiser of the lottery, the scheme is nevertheless a lottery (*Crown v. Mokandi Lal*, 41 I. C. 144; 18 Cr. L. J. 768). In this Punjab case, the staking of money

on the last digit or last two digits of the average price of opium at the monthly sales of chests of opium at Calcutta, was held to constitute a lottery.

Keeping a lottery office is an offence punishable under section 294 A of the Indian Penal Code.

Instruments of gaming.—This expression has not been defined in the Imperial Act (III of 1867). The definition given in the Local Act (I of 1917) has widened the scope of the expression so as to include articles which do not constitute instruments of gaming under the Imperial Act. Of course, in the Punjab and other places to which the Imperial Act applies and where the U. P. Amendment Acts have no force, the term 'instruments of gaming' means only the actual instruments such as cards, dice etc.

The definition of 'instruments of gaming' given in the Bengal Gambling Act II of 1867 is the same as in the U. P. Act I of 1917.

The Bombay Prevention of Gambling Act IV of 1887, defines the expression as including any article used as a subject or means of gaming.

Under the Burma Gambling Act I of 1899, the expression means and includes—

(a) Any cards, dice, counters, coins, gaming tables, gaming cloths, gaming boards, or other

articles devised or actually used for the purpose of gaming ;

(b) Any boxes, receptacles, lists, papers, tickets or forms used for the purpose of the game of 'it' or any other game or pretended game of a like nature.

Keeping a common gaming house is punishable under section 3 ; but in order to support a conviction under that section for keeping a common gaming house as defined in section 1, there must be evidence that instruments of gaming were kept or used (*Ah, Kyi v. Q-E., L. B. R. 1872—92, 532.*). And the instruments must be inside the place alleged to have been used or kept as a common gaming house. It is not sufficient if wagers are made in the place by means of some article outside the place (*Q-E. v. Kanji Bhimji, 17 B. 184.*). As to what are instruments of gaming, see below.

Any articles.—That is, whether originally intended to be used for gaming purposes or not. The word 'article' is confined to inanimate moveable objects. A thing may be an 'instrument of gaming' although not devised or intended or primarily used for that purpose. Any article that is made use of as a means of gam-

ing comes within 'instruments of gaming' irrespective of what the 'nature of that article might be (*Queen Empress v. Kanji Bhimji*, 17 B. 148; *E. v. Alloomiya*, 28 B. 129.). Where, however, it is clear that the article could not have been primarily meant to be used as such instrument, it is the duty of the prosecution to establish that the same was in the particular case employed as such, and to indicate the manner of its employment. It cannot take its stand on the mere possibility of the article having been used as an instrument of gaming, when originally the article was intended for a wholly different purpose. Evidence is necessary to prove that such article was actually used as an instrument of gaming and in the absence of such evidence no presumption of guilt of the accused would arise (*Ah Ngwe v. King Emperor*, 9 L. B. R. 205; 50 I. C. 59; 20 Cr. L. J. 323.). Thus, the primary use for which an article is intended may not conclusively determine whether the same is an instrument of gaming or not, but does determine the presumption to be made by the court, at the outset, as regards its actual employment.

An article cannot be presumed to be an instrument of gaming if it is ordinarily usable for

other purposes as well.

A 'bagatelle board' and 'billiard balls' are capable of being used both for games of chance and for games of skill ; so the mere fact that they were found in a house in course of a search will not raise the presumption that the house is used as a common gaming house (*Rat. Un. Cr. C. 923.*).

Used—That is, actually so used in the particular case. An article though not designed to be used or generally used as an instrument of gaming, may still be such an instrument in the particular case if the same has actually been employed as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming.

Means.—For instance 'cowries' may be used as a means for carrying on gambling, in which case they are instruments of gaming (*Bhaggi Lal v. E.*, 42 A. 470 ; 18 A. L. J. 562 ; 66 I. C. 230 , 21 Cr. L. J. 438.).

Appurtenance.—E. g., a book used for recording bets (*E. v. Nani Lal Mangalji*, 40. B. 263 ; 31 I. C. 1003)

For the purpose of carrying on.—In *Atma Ram v. King-Emperor*, All. 5 L. R. 33 Cr. ; 22 A. L. J. 249 ; 1924 A. I. R. All, 338 ; 81 I. C.

438., 'balls of paper' were held to be instruments of gaming, as without them the gaming could not have possibly been carried on.

Or facilitating.—For instance, telegrams used for determining the results of bets, which are therefore instruments of gaming (*E. v. Tribhavadas*, 26 B. 533.).

Instruments of gaming.

'Cowries'.—In *Bhaggi Lal v. Emperor*, 18 A. L. J. 562, 'cowries' used as a means for carrying on a gambling were held to be instruments of gaming. A similar view was taken in *Empress v. Bhola Misr*, 19 A. 311; 1897 A. W. N. 117. In *Q-E v. Bharsani*, 18 A. 23; 1895 A. W. N. 139, 'cowries' were held not to be ordinarily instruments of gaming. But in a recent Oudh case, *Ram Charan v. King Emperor*, 1925 Oudh A. J. R. 674; 5 A. I. Cr. R. 256., it has been held that in view of the amendment introduced by the U. P. Act I of 1917, the decision contained in 18 A. 23, is no longer good law and that 'cowries' are instruments of gaming. But see, *Bhaggi Lal v. Emperor*, 18 A. L. J. 562; 21 Cr. L. J. 438.—Also see, 25 C. 432.

Coins.—Coins are not instruments of gaming (*E. v. Vithal*, 6 B. 19; *Q-E. v. Govind*, 16 B.

283; *Q-E. v. Mukund Ram*, 25 C. 432; *Q-E. v. Sit Tun*, L. B. R. 1872-92, 155.) But if they are so used, they are such instruments (*Amrit Singh v. K-E.*, 5 C. W. N. 503.) See also, *K-E. v. Nga Thu Daw*. 2 L. B. R. 60. Evidence is necessary to prove that they were actually used for the purpose of gaming. The words 'gaming with cards, dice, counters, money or other instruments of gaming' in section 4, however seem to include coins within the category of 'instruments of gaming.'

Lottery tickets.—Are not instruments of gaming. In 12 W. R. 34. Cr. 'lottery tickets' by reference to which it is to be decided whether the holder thereof wins the whole or any part of the stakes, were held to constitute instruments of gaming similar to cards. Contra, see, *Gajju v. Emperor*, 14 N. L. R. 137; 47 I. C. 433. But now in the United Provinces, 'lottery tickets' cannot be deemed to be instruments of gaming, because 'gaming' does not include a 'lottery' (see definition of 'gaming').

A book for recording bets.—Is an instrument of gaming (*E. v. Nani Lal*, 40 B. 263; 31 I. C. 1003.). But see, *Atma Ram v. Emperor*, 22 A. L. J. 249.

A piece of paper for registering wagers.—Is such an instrument (*Emperor v. Lakhamsi*, 29 B. 264). Contra, *Emperor v. Vithal Das Harji*, 19 Bom. L. R. 830; 42 I. C. 920.

But 'pieces of paper' which brokers carry with them for recording transactions between their clients are not instruments of gaming (*E. v. Jesang*, 17 Bom. L. R. 600; 30 I. C. 124.).

Telegrams.—Used for determining the result of bets are such instruments (*E. v. Tribhavan das*, 26 B. 533.). But in *Emperor v. Jesang*, 17 Bom. L. R. 600, telegrams announcing the happening or non-happening of an event upon which wagers had been previously made, were held not to be instruments of gaming.

Books, papers and notice-boards—used in connection with betting on figures of price of cotton are not instruments of gaming but mere evidence of gambling (*Ram Partap v. Emperor*, 39 C. 968; 16 I. C. 171.). Also see *Atma Ram v. Emperor*, 22 A. L. J. 249.

Document which could not be deciphered—could not be regarded as instruments of gaming under the Gambling Act as amended by the Local Act I of 1917 (*Sri Ram v. Emperor*, 21 A. L. J. 318; 1923 All. A. I. R. 386.).

Balls of paper.—In *Alma Ram v. Emperor*, 23 A. L. J. 249., 'balls of paper' without which gaming could not have possibly been carried on, were held to be such instruments; but not the *slips of paper or books* in which bets were recorded, the same being unnecessary for carrying on gaming.

Machine.—The accused kept a machine known as 'Little Horses' which consisted of metal figures of horses moveable in concentric circles by means of a handle. The horse occupying a certain position when the machine was stopped after thus being moved, was the winning horse. The public staked their money on any of the horses before the machine was set in motion. The accused took all the stakes but returned to persons who had staked on the winning horse four times the amount of their stakes. The machine was held to be an instrument of gaming (*Hari Singh v. Jadunandan*, 31 C. 642.).

'Piece of tile'.—Are not such instruments; See, *Rat Un. Cr. C.* 314. Nor 'pieces of chalk' unless proved to have been used for gaming (*Har Govind v. King Emperor*, 10 A. L. J. 355.).

White beans pices of cigartte cartons or cups are neither devised nor ordinarily intended

to be used as instruments of gaming ; it is therefore necessary to prove by evidence that such articles were actually used as such instruments. (*Ah Ngwe v. King-Emperor*, 9 L. B. R. 205 ; 50 I. C. 59.).

Fighting cocks—are not instruments of gaming (*K.E. v. Po Kywe*, 9 L. B. R. 219 ; 50 I. C. 671.). Also see 50 I. C. 666 ; L. B. R. 1872-92, 317. The word *article* applies to inanimate objects only.

Fighting birds are not instruments of gaming ; and the mere fact that cock-fighting accompanied by betting thereon, is carried on in an enclosure is not sufficient to convert the enclosure into a common gaming house (*K.E. v. Maung Ke*, 9 L. B. R. 185 ; 50 I. C. 666 ; *Q.E. v. Nga Hmat*, G31 ; L. B. R. 1872-92., 317.).

Tickets and cash-box.—Tickets (being forms of memoranda for recording wagers) and a cash-box, used in furtherance of wagering business, were held to be such instruments (*Lacchhi Ram v. Emperor*., 20 A. L. J. 218) But see *Atma Ram v Emperor*, All. 5 L. R. 33 Cr.

Common gaming house.—The first part of the definition is new ; it was added by the U. P. Act I of 1915 (See Appendix . The second para.,

with the exception of words 'In the case of any other form of gaming' constituted the whole definition prior to the passing of the U. P. Act I of 1925; and was held not to be materially different from the definition given in the Imperial Act (III of 1867), save that it was no longer necessary, as an ingredient of the offence, to establish playing by cards, dice, gaming tables or other articles of that nature. The essential element remained, so that it was necessary to establish, that the owner or occupier took a fixed commission irrespective of the result of the gaming, or at the outside, that he manipulated the conditions in such a manner that he could not possibly lose (*Lachchi Ram v. Emperor*, 20 A. L. J. 218.). Also see *Atam Ram v. Emperor*, All 5 L. R. 33, at p. 36.

A 'common gaming house' is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, and it makes no difference that the house was not open to all who might desire to use the same for gaming (47 M. 426; 1924 Mad. A. L. R. 729.). Where the accused were found playing for small stakes in a house rented and occupied by them temporarily while they were out on a picnic party, it

was held that under the circumstances the house was not a common gaming house (*E. v. Chiman Lal.*, 19 Bom. L. R. 693 ; 41, I. C. 997.).

Gaming on the digits.....or cotton—This aims at a new form of gaming which came into fashion in the year 1910 and succeeding years. In Agra and other places it took the form of what is known as 'Satta' gambling. The public were invited to guess and bet on what would be the last digit or last two digits of the average price of a chest of opium at the monthly sales in Calcutta. In Saharanpur and other neighbouring districts instead of the price of opium, the average price of cotton in Bombay as telegraphed by a broker was used for the purpose of betting, and bets were made on the last digit or the last two digits. See, *Atma Ram v. King Emperor*. All. 5 L. R. 33 Cr; 22 A. L. J. 249.

Digits of papers..... receptacles.—For an instance of the game contemplated, see. *Atma Ram v. King-Emperor.*, All. 5 L. R. 33 Cr.

It is to be noted that under clause 1 of the definition, accrual of profit to the owner or occupier of the house in which gambling takes place, is not essential to convert the house into a common gaming house. The house becomes a 'common

gaming house' by the mere fact that instruments of gaming are kept or used therein for such gaming.

Tent.—See, *Banwari Lal v. King Emperor*, 50 I. C. 351.

Vessel.—Includes any ship or boat, or any other description of vessel used in navigation.

Instruments of gaming are kept or used for such gaming.—Mere gambling in the *Satta* or similar form is not sufficient to turn any premises into a 'common gaming house.' It is absolutely necessary that instruments of gaming should be found in the premises in which such gambling takes place. And the instruments of gaming must be those which are used for carrying on such gaming.

Betting in a 'public place' on the figures of the price of opium, unaided by the use of any instruments of gaming, would be punishable under section 13 of this Act. See Notes to section 13, *post*.

For the rest consult Notes under section 1 of the Imperial Act.

(Note.— 'Imperial Act' means Act III of 1867 unaffected by the provision of any U.P. Act.).

2. Sections 13 and 17 of this Act shall extend
Power to extend Act. to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway station-house and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and, from time to time, to alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

(Note.—For the United Provinces see under “U. P. Amendment” at the end of notes to this section).

Notes.

Similar Provisions.—See section 2 of the Bengal Public Gambling Act, 1867. See Appendix.

Act applied to 'Administered Areas in Central India'—This Act (excepting the first two paragraphs of section 1, and section 2) has been applied to the Cantonments of Mhow, Nimach, Nowgong, and Sehore, the Indore Residency Bazaars and the Civil Lines of Nowgong See Foreign Department Notification No. 2365—I—B., dated the 14th November, 1912.

Commencement of the Act.—The Act has been not declared to come into force on a particular day; hence the day on which it received the assent of the Governor-General is the date of the commencement of its operation.

'Sections 13 and 17'—These words were substituted for "Sections 13, 17 and 18" by the Repealing and Amending Act, 1891, Schedule II.

Only sections 13 and 17 have been put into immediate operation. As regards other sections, power has been given to the Local Government concerned to apply the same whenever and wherever it may deem fit to do so.

Section 13 prohibits gaming in a public street, place or throughfare. It also prohibits setting birds or animals to fight in such a place.

Section 17 provides for the recovery and application of fines imposed under this Act.

Whole of the said territories.—‘Said territories’ means the territories mentioned in the preamble. There, as laid down in S. 13, a police officer may arrest without warrant any person found gaming or setting birds or animals to fight in a public street, place or throughfare. The person so arrested, shall, on conviction by a Magistrate, be liable to a fine or imprisonment. Any fine imposed may be recovered in the manner prescribed by the Code of Criminal Procedure, 1898 (as amended by Act XVIII of 1923). and applied as directed by the Local Government concerned.

Lieutenant Governor.—See notes under section 1, *ante*.

To extend.—Under this section, the remaining sections of this Act have been extended to a large number of places in the Punjab, for which see the Punjab Local Rules and Orders

They have also been extended to a large

number of places in the Central Provinces ; see C. P. Rules and orders, Vol I. (1914), page 16, and Vol. II (1914), pages 11 to 16 ;

For extensions in the United Provinces of Agra and Oudh, see U. P. Local Rules and Orders. Also see U. P. Gazette, Part I, dated June 18, 1910.

For extension to Bazars in the Khojak Pass in British Baluchistan, with the exception of sections 6 and 9, see, notification No. 2569, dated the 24th April, 1891, Gazette of India, 1891, Pt. II, p. 278, and the Baluchistan Code, p. 121.

Notification.....Official Gazette.—Other sections can be extended only by a notification published in the Official Gazette. The notification must appear in three consecutive issues of the Gazette, otherwise the extension would be invalid. The publication of notification in one issue of the Gazette only is ineffectual (*Bhan v. Emperor*, 3 P. R. 1885 Cr.; in *re Beni Madhav*, 21 W. R. Cr. 23.); see also *Queen v. Zahur Sh.*, 18 W. R. Cr. 41.

The Act or any of its provisions, cannot be extended to a town or place to which the Act does not *ipso facto* apply under the terms of section

2, by the mere publication of notification in one issue of the Gazette only (*Bhan v. Emperor*, 3 P. R. 1885 Cr.).

Town.—A notification extending the provisions of this Act to a town cannot be held to include an extension of the Act to the cantonment (*Raja v. Emperor*, 23 P. R. 1887 Cr.).

To define.....the limits.—It is not imperative to define limits in the notification. Absence of definition of limits does not render the notification inoperative provided the place is shown to be undoubtedly within the town according to its ordinary designation (*in re Beni Madhav*, 21 W. R. 23, Cr.).

A notification in the Punjab Gazette, extending the whole of the provisions of the Act to a town are not ineffectual by reason of their defining the limits of the town (*Elahi Bukhsh. v. Emperor* 12 P. R. 1886 Cr.).

The limits may be fixed only for the purposes of this Act. Where the Lieutenant-Governor by notification declared the Act to be in force within the boundaries of a certain Municipality, which were subsequently revised, and an offence was committed within the boundaries as existing

at the date of the notification under the Act, but without the boundaries as revised, it was held that for the purpose of this Act the boundaries existing at the date of the notification must be considered (*Janak. v. Emperor*, 26 A. W. N. (1906) 133; 3 Cr. L. J. 439.). An alternation made for the purposes of the Municipalities Act does not *ipso facto* alter the boundaries for the purposes of this Act.

In an Allahabad case *Kashi Nath v. Emperor*, decided on the 25th March, 1925, the words "the Ganges" in the Government Notification dated the 14th June 1910, were taken to mean the North bank of the Ganges and not the mid-stream, and gambling in a boat which was on the Benares side of the mid-stream of the Ganges was held to be no offence (1025 A. I. R. All. 518.).

The question of limits arises where a section of the Act is applied by an extension made under the power conferred by this section. No such question can generally arise in proceedings under sections 13 and 17. So gambling on a 'Kachcha' public road outside the limits of a municipality to which the provisions of the Act had been extended was held to be an offence under section 13, because the words 'limits aforesaid' in that section were taken to refer to the whole of the

territories under the administration of a Lieutenant-Governor (*Radhe v. Emperor*, 12 Cr. L. J. 107; 9 I. C. 630.). Thus, in a trial for an offence under section 3 or section 4 it is the duty of the prosecution to prove that the alleged offence was committed in a place to which the provisions of the Act had been extended by means of a notification published in three successive issues of the official Gazette.

Alter the limits.—The alteration should be made for the purposes of this Act, otherwise it would not affect the limits previously fixed. See *Janak. v. Emperor*, 1906 A. W. N. 133; 3 Cr. L. J. 439.

From the date of any such extension.—The date of extension is the date specified as that on which the extended sections are to come into operation. If no such date be mentioned in the notification, the extension would not take effect until the third publication of the notification.

Extension to be judicially noticed. Whether or not portions of the Act had been extended to a

particular locality, and whether the steps taken in this view were sufficient in law to effect it, are questions of law and fact which the court has to decide for itself before convicting the accused.

When once a decision had been arrived at, the point cannot be re-opened in a subsequent case—except where the facts of a particular case bring it within S. 44 of the Evidence Act (*Ganga v. Emperor*, 41 P. R. 1885 Cr.). Extension of the Act by the Local Government in conformity with the provisions of S. 2 is a condition precedent to taking action under S. 3 or S. 4, and the accused cannot be called upon to show the prosecution to be unsustainable for want of such extension.

U. P. Amendment.

Section 2.

NOTES.

The first part of section 2 of the Imperial Act does not apply to the United Provinces of Agra and Oudh. The following has been substituted for it by section 2 of the United Provinces Act V of 1919 :—

"Sections 13 and 17 of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor, whenever he may think fit, to extend by a notification to be published in the official Gazette, all or

any of the remaining sections of this Act to any area within the United Provinces".

Said territories.—That is, the United Provinces of Agra and Oudh.

Notification.—Its publication in three successive issues of the official Gazette is not necessary now ; publication only once is sufficient. The Local Act V of 1919 has not application to extensions made before it was passed. The validity of these is to be determined with reference to part I of section 2 of the Imperial Act.

Extension.—See Notes above; For a list of towns to which provisions of this Act have been extended, see, Local Rules and Orders for the United Provinces. Also see, United Provinces Gazette, dated June 18, 1910, Part I.

3. *Whoever, being the owner or occupier, Penalty for owning or having the use of any house, or keeping, or having charge of, a gaming house, walled enclosure, room or place, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house ; and*

whichever being the owner or occupier of any such house, walled enclosure, room or place, as

aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code, for any term not exceeding three months.

(Note.—For U.P., read “house, room, tent, walled enclosure, space, vehicle, vessel or place” for the words “house, walled enclosure, room or place” in this section. See S. 3 of U. P. Act I of 1917. See Appendix.).

NOTES.

General.—For similar law, see S. 3 of the Bengal Act II of 1867; S. 4 of the Bombay Act IV of 1887; S. 12 and S. 13 A. of the Burma Act I of 1899; and S. 118, sub-section (1), clause (f) of the Cantonments Act, 1924.

any of the remaining sections of this Act to any area within the United Provinces".

Said territories—That is, 'the United Provinces of Agra and Oudh.

Notification.—Its publication in three successive issues of the official Gazette is not necessary now ; publication only once is sufficient. The Local Act V of 1919 has not application to extensions made before it was passed. The validity of these is to be determined with reference to part I of section 2 of the Imperial Act.

Extension.—See Notes above; For a list of towns to which provisions of this Act have been extended, see, Local Rules and Orders for the United Provinces. Also see, United Provinces Gazette, dated June 18, 1910, Part I.

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Penalty for owning or keeping, or having charge of, a gaming house, *or having the use of any house, walled enclosure, room or place, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house ; and*

whosoever being the owner or occupier of any such house, walled enclosure, room or place as

aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code, for any term not exceeding three months.

(Note.—For U.P., read “house, room, tent, walled enclosure, space, vehicle, vessel or place” for the words “house, walled enclosure, room or place” in this section. See S. 3 of U. P. Act I of 1917. See Appendix.).

NOTES.

General.—For similar law, see S. 3 of the Bengal Act II of 1867; S. 4 of the Bombay Act IV of 1887; S. 12 and S. 13 A. of the Burma Act I of 1899; and S. 118, sub-section (1), clause (f) of the Cantonments Act, 1924.

Four classes of persons are punishable under this section:—

(1) The owner or occupier of a house who keeps, opens or uses it as a common gaming house;

(2) The owner or occupier of a house who permits the house to be opened, occupied, used or kept as a common gaming house;

(3) A manager or assistant of a common gaming house;

(4) One who gives money for gambling in a common gaming house.

An offence under this section has been considered by the Legislature to be more serious than an offence under section 4.

PART. I

Owner.—Under this clause it is necessary that he be also in possession of the premises.

Occupier.—i. e. a person in possession of the premises, a tenant, for example.

Having the use of.—That is one who merely uses the premises though he is neither its owner nor tenant. The 'use' contemplated is not synonymous with *use for gaming purposes*;

it simply means any use other than use for the purpose of gambling. It is not sufficient merely to show that the accused used the place for gambling (*Emperor v. Walia Musaji*, 29 B. 216.). Where gambling was going on in a room over a Thakur Dwara dedicated by the accused, it was held that there was a fair presumption that the accused was the occupier or at any rate had the use, of the room within the meaning of this section (*Bhola Nath v. Emperor*, 21 Cr. L. J. 442 ; 56 I. C. 234.).

Place.—See notes under section 1, *supra*.

Limits to which this Act applies.—See Notes on page 4. This section can be enforced only after a notification issued under section 2.

Opens.—That is, starts. It signifies inviting persons by means of advertisement etc., to congregate at a certain place for gaming.

Keeps.—i. e. maintains it regularly as a place fixed for gambling.

Or uses—That is, uses the house for gaming purposes in addition to any other business that might be carried on therein. It is immaterial whether it is used for gaming habitually or only occasionally. The word 'use' means *use*

for gaming purposes, and is distinct from the *use* contemplated by the words 'having the use of'. For a conviction under this section it is not sufficient to show that the accused used the place for gaming purposes. It must also be established that he is the owner or occupier or a person having the use of the place (*Emperor v. Vallia Musaji*, 29 B. 226 ; 2 Cr L. J. 26.).

Common gaming house—See Notes to S. 1.

A charge of being the owner or keeper of a common gaming house may be proved even without a legal warrant and search (*Var Singh v. Emperor*, 22 P. R. 1895 Cr.).

PART II.

Owner.—Under this para it is not necessary that the owner be in possession of the premises wherein gambling is carried on.

As aforesaid.—That is "Situate within the limits to which this Act applies" as in part I.

Knowingly...or willingly permits.—These words imply both previous permission as well as subsequent connivance.

If an owner lets his house to a tenant who opens therein a common gaming house, the owner

cannot be prosecuted for permitting the same to be opened, unless he knew at the time of letting that the tenant intended to use it for that purpose. The owner however must take every measure necessary for the ejectment of the tenant, after he comes to know of the tenant's illegal action, otherwise he would be guilty. If however the lease cannot be terminated or he does not succeed in his endeavour to eject the tenant, he is not liable under this clause.

Evidence of knowledge is essential. The owner of a house cannot be convicted for having permitted his house to be used as a common gaming house unless there is evidence of actual knowledge on his part that it was being so used (*Ali Lin v. Emperor*, 1923 A. I. R. Rang. 141 ; 75 I. C. 71.).

Occupied.—If the owner had no knowledge previous to actual occupation, he cannot be prosecuted for permitting the occupation of the premises as a common gaming house.

PART III.

Care or management.....conducting the business.—These words show that persons taking a subordinate part in the up-keep of a common gaming house are equally liable.

Here it is immaterial whether anything done by a manager or an assistant is intentional or otherwise. It is sufficient if the business of the common gaming house is helped on or facilitated. For example, the manager of a hotel in a portion of which gambling is allowed by the proprietor of the hotel is not necessarily punishable under this clause. But if it is shown that he supervised the gambling part of the business thereof, he is liable even though he may not do so with any unlawful intention but merely as a servant of the hotel. So a servant is not guilty merely because his master keeps a common gaming house. He must assist in conducting the business of the common gaming house; the assistance may consist in ministering to the comfort of the gamblers.

For the purpose aforesaid.—That is, 'as a common gaming house'.

PART IV.

Advances or furnishes money for the purpose of gaming.—This means that the person who gives money knows beforehand that it will be used for gambling and does give it to be so used. The person advancing money is guilty even though the money may not be actually so used.

Persons frequenting.—The lender is not guilty if he gives money merely for gambling, because gambling by itself is no offence under the Act. It must be further established that the money was advanced to be used for the purpose of *gaming in a common gaming-house*. For instance, an on-looker in a common gaming house finds a gambler, possibly his friend, has lost his all and gives him money wherewith to go on gaming.

A person advancing money for gambling in a private house is not punishable under this clause even if he knows that the other players who will take part in the gaming are the frequent visitors of a common gaming-house. The Act does not prohibit gaming with any particular class of individuals or in a private house. This clause prohibits abetment of gambling in a common gaming-house. A different construction would not be in consonance with the policy of the Act which seeks to put down gaming in a common gaming house but not in a private house.

PART V.

Imprisonment.—See section 53 of the Indian Penal Code.

Three months.—For enhanced punishment under this section, *see* section 15 of this Act.

Punishment.—Where contrary to the usual rule, the punishment of fine precedes the alternative of imprisonment, the intention of the Legislature is that primarily the punishment of fine should be imposed, and imprisonment inflicted only in aggravated cases. An offence under S. 3 is more serious than one under S. 4; but in any case under the gambling act, a Magistrate must have and must state in his judgement special reasons for inflicting a substantive sentence of imprisonment. (*Sh. Moti v. Emperor*, 9 N. L. R. 68; 19 I. C. 949.). See also 2 Cr. L. J. 435.

Conviction.—Under this section or section 4 there can be no conviction for playing a friendly game on a festive occasion without any idea of profit and in the absence of proof that the house was used formerly for such purposes (*Jai Narain v. Emperor*, 50 I. C. 171; 20 Cr. L. J. 283.).

For a conviction under this or the next section, it must be shown that the house in which the alleged offence was committed was a common gaming house under the Act (*Crown v. Futtah*, 46 P. R. 1867 Cr.). There must be evidence that instruments of gaming were kept or used

therein. (*Ah Kyi. v. Queen-Empress, L. B. R. 1872—92, 532.*).

For a conviction for keeping a common gaming house, the prosecution must prove not only that the accused owned or occupied the house and that instruments of gaming were kept or used in it, but that they were kept or used for the profit or gain of the accused (*Raghunath v. Emperor, 16 A. L. J. 760; 47 I. C. 870.*).

Where the circumstances and the position of the person in whose house gaming took place, and of those who partook in it showed that their object was merely to indulge in a common friendly amusement, and that the idea of making any profit by levying a commission was not necessarily present in the mind of the person owning the house, it was held that the necessary elements constituting the offence under s. 3 or s. 4 had not been made out (*Ram Shanker v. King-Emperor, 9 O. L. J. 88; 39 I. C. 334.*).

Summary Trial.—An offence under this section can be summarily tried. See S. 260 (1) (a), *Cr.P.C.*

Joint Trial.—For joint trial of persons accused under this section, with those charged section 4, See Notes to S. 4, *infra*.

S. 562, Code of Cr. Pro.—As to its applicability to offences under this section, see Notes to S. 14, *infra*.

Sentence.—See Notes under S. 4, *infra*.

Confiscation of money.—See Notes to S. 8, *infra*.

U. P. Amendment.

Section 3.

NOTES.

In cases falling under clause (1) of the definition of 'common gaming house' given in the United Provinces Public Gambling (Amendment) Act, 1925, it is not necessary that accrual of profit to the owner or occupier of a gaming house be established in order that the same may be characterised as a common gaming house. Therefore a house will be deemed to be a common gaming house if only instruments of gaming are kept or used in it for *Satta* or similar gambling; it is immaterial whether the owner or occupier thereof does or does not derive any profit by such use of the house.

Clause (2) of the definition is not materially different from that given in Act III of 1867. Consult therefore *supra*, Notes to S. 1 of the Imperial Act.

Amendment of S. 3.—This section in its application to the United Provinces has been amended by the S. 3 of the U. P. Act I of 1917, the words “house, room, tent, walled enclosure, space, vehicle, vessel or place” having been substituted for the words “house, walled enclosure, room or place” wherever they occur in section 3, 4, 5, 6, and 10 of the Imperial Act.

For comment on other points refer to Notes to S. 3 of the Imperial Act, *ante*.

(Note.—‘Imperial Act’ means Act III of 1867 unaffected by the provisions of any U. P. Act.).

4. *Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code for any term not exceeding one month;*

and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

(Note.—For the United Provinces, read “house, room, tent, walled enclosure, space, vehicle, vessel or place” for the words “house, walled enclosure, room or place” in this section. See section 3 of the U. P. Act I of 1917.).

NOTES.

General.—Section 3 provides punishment for keeping a common gaming house; this section is directed against those frequenting such a house for gambling. Mere gambling is no offence under the Act. The chief element of an offence under this section is to be *found* in a common gaming house, either actually engaged in gaming or present there for the purpose of gaming. A person not found in a common gaming house is not liable under this section. The mere fact that he was found gambling would not justify his conviction.

For similar law in other provinces, see section 4 of the Bengal Act II of 1867; section 5 of the Bombay Act IV of 1887; section 11 of the

Burma Act I of 1899 ; section 7 of the Madras Act III of 1889 ; and section 46 of the Madras Act III of 1888.

Analysis.—This section contemplates four classes of offenders:—

(1) Persons found in a common gaming house gaming with instruments of gaming ;

(2) Persons found present in such house for the purpose of gaming with such instruments ;

(3) Persons found in such house *playing* with such instruments ;

(4) Persons found present in such house for the purpose of *playing* with such instruments ;

Found.—According to the opinion of the Lahore High Court, this word means *found on an entry and search under section 5 of this Act, by the officers authorised*. The offence consists in being found in a gaming house when it is lawfully searched. The Act nowhere makes the act of gambling, even in a common gaming house itself an offence. If it were clearly proved or admitted that an accused person had been gambling constantly or up to the very moment of the entry by the police, he could not be convicted under any section if he succeeded in effecting his

escape before the police effected their entry (*Fazal Ahmad v. Empress* 35 P. R. 1894 Cr.).

This decision was not approved in the Nagpur case, *Uderam v. Emperor*, 17 N. L. R. 59; 62 I. C. 332; 22 Cr L. J. 508. It was held that the word 'found' was certainly unusual, but it must be understood in its ordinary everyday sense. If it ever were satisfactorily proved that a person had been 'found' gaming in a common gaming house by a number of private persons, his conviction under section 4 would not be improper even though the police or other authorities knew nothing about it at the time and he was not arrested till some weeks later. "Section 4 of the Act in the clearest terms makes it an offence to be found gaming or for the purpose of gaming in a common gaming house at any time whatsoever. There is no mention of any search in that or any earlier section of the Act." The particular case was, however, decided without dissenting from the decision in 35 P. R. 1894 Cr., as all the accused persons were seen on the premises on entry by the police in the course of a lawful search, though most of them managed to evade arrest at the moment.

In order to make a person liable under this

section it is not necessary that he should be *found* only by a Magistrate or a police officer acting under S. 5 of this Act. A Magistrate may take action under section 4 on information furnished by a private individual and may convict upon the evidence given by a private individual (*Queen-Empress v. Nga Ba*, L. B. R. 1893-1900, 321.). For a contrary view, see p. 251 of the report. Also see, L. B. R. 1872-1892, 486.

For the purposes of this section it is sufficient if the accused, at the time of the raid, was *seen* inside the common gaming house. Arrest of the offender inside the house is not necessary; mere finding is sufficient (*Vir Singh v. Empress*, 22 P. R. 1895 Cr.).

In any such house etc.—That is, in any house opened, occupied, used or kept as a common gaming house as mentioned in section 3. A conviction under this section is unsound if the accused is not found inside a common gaming house. The accused must actually be found in the house which is searched. If he is not found in the house, but in another house under circumstances raising a presumption that he was playing in the common gaming house, he *cannot* be convicted (*Fazal Ahmad v. Empress*, 35 P. 1894 Cr.).

Gaming.—Gaming is playing at any game, sport, pastime or exercise lawful or unlawful, for money or any other valuable thing which is staked on the result of the game, that is, which is to be lost or won according to the success or failure of the person who had staked. The essentials of a game are : (1) players ; (2) a contest ; (3) active participation by the players in the contest ; and, (4) stakes. See also Notes to section 1, *ante*.

Since gaming does not include 'betting' or 'wagering', betting on the figures of the price of opium is no offence. See 26 B. 533.

Money or other instruments of gaming.—See Notes under section 1, *ante*. These words show that 'coins' may be instruments of gaming under the Act.

The words include only the actual instruments of gaming. Fighting cocks and birds are not such instruments (*K-E. v. Po Kwee*, 9 L. B. R. 219; 50 I. C. 671; *E-K. v. Maung Ke*, 9 L. B. R. 185; 60 I. C. 666.).

Or is found there present for the purpose of gaming.—Mere presence inside a common gaming house for the purpose of gaming is sufficient to constitute an offence under the section. It is not necessary that the accused should

be actually engaged in gambling in the house. What is essential is that the house should be a common gaming house as defined in section 1, and that the accused should be found in it.

In order to sustain a conviction under this section or section 3, it must be shown that the house in which the alleged offence was committed was a common gaming house within the meaning of section 1 (*Crown v. Futtah*, 46 P. B. 1867 Cr.). Before a conviction could be had under this section or section 3, it should be proved that cards, dice, tables or other instruments of gaming were kept or used for the profit or gain of the person owing, occupying, using or keeping the house (*Emperor, v. Mt. Kashi*, 6 C. P. L. R. 17 Cr.). Direct evidence may be adduced for the purpose, or presumptive evidence under section 6 may be relied upon. Mere playing or gaming without a common gaming house would be no offence under the section.

Wager.—Something staked on the issue of anything.

Stake.—That which is laid down to abide the issue of a contest, to be gained by victory or lost by defeat ; something hazarded.

Or otherwise.—That is, merely for playing with cards etc., without any idea of winning or losing money thereby. Mere playing (without stakes) with instruments of gaming is also punishable under the first portion of the section. It will read thus : “Whoever is found in any such house.....playing.....with cards.....shall be liable to a fine, etc.” A common gaming house is a house in which instruments of gaming *are used* for the profit or gain of its owner or occupier. It is immaterial whether those using the instruments of gaming are or are not playing for money.

It is however absolutely necessary that the house in which such harmless playing was going on should be a common gaming house; in other words, the play must be accompanied by payment of commission to the owner or occupier of the house. Otherwise it would be no offence under the section. A house is not a common gaming house simply because an innocent recreation, as, mere playing with cards, is going on therein (*x. Weir, 918.*), even though it may have been used as such house on previous occasions. The section does not mean that a common gaming house cannot be utilized except as such. For a conviction under this section a house must be

proved to 'have' been a 'common gaming' house at the time when the accused were found therein, for otherwise they cannot be said to have been found in such a house. It must be shown that the house in which the alleged offence was committed, was a common gaming house within the meaning of section 1 (*Crown v. Fullah*, 46 P. R. 1867 Cr.), though even then, as the words 'until the contrary is proved' in the second clause imply, it is possible that an unoffending individual may be present therein.

Fine.—See Notes to section 3 under the heading 'Punishment'. For a first offence under this section, fine is the more appropriate punishment (*Q-E. v. Nga Po Tu*, L. B. R. 1872-92, 428.).

Sentence.—A sentence of both imprisonment and fine under this section or section 3 is illegal (*L.B.R. 1872-92, 434*). For enhanced sentence, see section 15, *post*.

Imprisonment.—See section 53 of the Indian Penal Code.

Imprisonment in default of payment of fine should not exceed one week. See section 65 of the Indian Penal Code, which has been made applicable to offences under this Act by 1

General clauses Act, 1897 (*L. B. R. 1893-1900, 385*).

Summary trial.—See Notes to section 14, *post*.

Section 562, Code of Cr. Pro.—As to its applicability to an offence under this section, vide Notes to section 14, *post*.

Conviction.—A person who keeps a common gaming house and gambles in it himself, cannot be convicted and sentenced separately under sections 3 and 4 of this Act (*Q-E. v. Nga Ngue Htaing, L. B. R. 1893-1900, 459*). The taking part in the game by the house-owner or occupant may be and often is a part of the method of conducting or of assisting in conducting the business of a common gaming house for the profit or gain of the owner or occupier. Where the Magistrate found that the accused had used his house as a common gaming house, and also that he had himself played cards for money in the house, held that section 71 of the Indian Penal Code applied to such a case and that the accused was not liable to be sentenced for an offence of being found in a common gaming house as well as for an offence of keeping such a house (*King Emperor v. Mi Tain, 4 L. B. R. 104*).¹

But in an Oudh case, *Chhotey Lal v. King-Emperor*, 1924 A. I. R. Oudh, 403; 81 I. C. 186; 11 O. L. J. 347, it has been held that the offences under sections 3 and 4 are distinct offences; and a person may be guilty of both the offences by keeping a common gaming house and himself taking part in gaming there; and hence a conviction of a person under both the sections is not illegal.

Joint trial.—A person charged under section 3 cannot be tried with one charged under section 4, as the keeping of a gaming house and being present in it at the time of a Police raid cannot be said to be parts of the same transaction within the meaning of section 239, Code of Criminal Procedure (*Makhan v. Crown*, 5 P. W. R. 1910 Cr.; 5 I. C. 720; *Crown v. Fazel Din*, 27 I. C. 844; 35 P. R. 1914 Cr.). For a contrary view see *Khilinda Ram v. Crown*, 3 L. 359; 68 I. C. 845; 23 Cr. L. J. 621. In another Punjab case *Bhana Mal v. Crown*, 6 P. R. 1919 Cr; 49 I. C. 779, dissenting from the above case in 5 P. W. R. 1910 Cr. and relying upon a Nagpur case (*Sh. Moll v. Emperor*, 9 N. L. R. 68; 14 Cr. L. J. 293), it was held that the keeper of a common gaming house charged with an offence under section 3, and others found therein accused

offences under section 4, can all be proceeded against at one trial. The decision in the Nagpur case is based on the reasoning that the offences of the keeper of a gaming house and the players found therein arise out of facts so inseparably connected together as to form a single transaction, and therefore the house-keeper who commits one offence in the transaction, and his customers who commit another (the house-keeper being really an abettor of the gambling) are clearly within the purview of section 239 of the Criminal Procedure Code for joint trial as persons accused of different offences committed in the same transaction. The Punjab decision contained in *5 P. W. R. 1910 Cr.* was not approved.

Allahabad High Court. Offence under section 3 and 4 are the complements of each other, one could not exist without the other. A person keeping a common gaming house and others found gaming therein can be tried jointly as the offences arise out of the same transaction (*Ganeshi Lal v Emperor*, 20 A. L. J. 967). See *Banwari Lal v. Emperor*, 50 I. C. 351. See also section 239 of the Code of Criminal Procedure, 1898, as amended by Act XVIII of 1923.

Offence.—There can be no conviction under this section for playing a friendly game on a festive occasion without any idea of profit and in the absence of evidence of use of the house formerly for such purposes (*Jai Narain v. Emperor*, 50 *I. C.* 171; 20 *Cr. L. J.* 283.). See also *King-Emperor v. Shankar Dayal*, 25 *O. C.* 111; 1922 *A. I. R. Oudh*, 224; 71 *I. C.* 62..

Where from the circumstances and the position of the person in whose house gambling took place, and of those who partook in it, it appeared that their object was merely to indulge in a common friendly amusement and that the owner of the house had no idea of making profit by charging commission, no offence under section 4 was held to have been made out (*Ram Shanker v. King-Emperor*, 20 *O. C.* 4; 39 *I. C.* 334; 18 *Cr. L. J.* 494.). This case was followed in *Ram Charan v. King-Emperor*, 1925 *A. I. R. Oudh*, 674, where a conviction under this section was set aside on the ground that although instruments of gaming were found in the house, it appeared from the circumstances that the object of the accused in gambling was merely to pass time in a common friendly amusement, the idea of making any profit being foreign to them all.

Confiscation of money.—See notes to section 8, *infra*.

Evidence.—Personal opinions of Magistrates in regard to the witnesses ought not to weigh in estimating the value of evidence in a case (*Jai Narain v. Emperor*, 50 I. C. 171; 20 Cr. L. J. 283.).

The owner of the house, in a case under section 3 or section 4, should be allowed to prove that the house was not used as a common gaming house (*Q-E. v. Nga So Gyi*, L. B. R. 1872-92, 53.).

Any person found in any common gaming house.—That is, a person who is present, but is not actually engaged in gambling or playing as mentioned in clause 1 of this section.

During any gaming or playing therein.—It is necessary that there should be gaming or playing in the house while the individual is present there. No presumption will arise against him unless it can be shown that gambling was going on at the time when he was present, even though the house were a common gaming house (*Raghunath v. Emperor*, 16 A. L. J. 760; 47 I. C. 810.).

Shall be presumed.—Mere presence gives rise to the presumption. The house must, however,

be proved to be a common gaming house, otherwise the presence therein of persons not engaged in gaming will not raise a presumption against them (*Raghunath v. Emperor*, 16 A. L. J. 760; 19 Cr. L. J. 953.).

Until the contrary be proved.—The presumption created by this section is rebuttable. The onus is on the accused to prove his innocence, not on the prosecution to establish his guilt which is presumed by the mere fact of his presence inside a common gaming house. See, *L. B. R.* 1872-92 p. 53.

The word 'proved' does not necessarily mean that the accused should produce evidence to establish the exception in his favour; if the circumstances disclosed by the testimony put forth on behalf of the prosecution together with the statement of the accused are sufficient to exculpate him, he is entitled to an acquittal. See notes to section 6, under the heading "Until the contrary is made to appear." Also see *Mangali v. King Emperor*, 6 A. I. Cr. R. 467.

U. P. Amendment.

Section 4.

NOTES.

For the definition of 'Common gaming house' see the U. P. Act I of 1925. Also see Appendix, and Notes to section 1, *ante*.

For the words "house, walled enclosure, room, or place" in this section, read "house, room, tent, walled enclosure, space, vehicle, vessel or place." These words were substituted by section 3 of the United Provinces Public Gambling (Amendment) Act, 1917. Vide Appendix.

Gaming.—For the definition of this word, see section 1, and Notes thereunder. This term includes 'wagering' or 'betting'. Hence betting on the figures of the price of opium (generally know as *Satta* betting) would amount to gaming in the United Provinces. It must however, be noted that mere wagering or betting *without instruments of gaming* is no offence under the section. Also consult Notes to section 4 of the Imperial Act, *ante*.

(N. B.—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any United Provinces enactment.).

Instruments of gaming.—For definition, see section 1 and Notes thereunder.

'Cowries' are instruments of gaming in view of the amendments introduced by the U. P. Act I of 1917, the decision to the contrary contained in 18 A 23, being no longer good law in the United Provinces (*Ram Charan v. King Emperor*, 5 A. I. Cr. R. 256 ; 1925 A. I. R. Oudh. 674.). But see, *Bhaggi Lal v. Emperor*, 18 A. L. J. 562.

A book for recording bets, telegrams used for determining results of bets have been held to be instruments of gaming; see section 1, definition of 'instruments of gaming', and notes thereon. Gaming has been defined so as to include betting on the figures of the price of opium or of cotton. 'Instruments of gaming' includes any article used as an appurtenance of or for the purpose of facilitating gaming. But can a person betting on the digits of the price of any commodity be said to be '*playing or gaming with*' a book used for registering the bets laid? Worded as the section stands, it seems to be hardly open to such an interpretation without straining the meaning of the words "*playing or gaming with.*" The words show that the expression

'gaming' is used in this section in a restricted sense as including only the actual instruments of gambling such as cards, dice, etc.

Found in any common gaming house.—In cases falling under clause 1 of the definition of the term 'common gaming house', it is no longer necessary to prove that the owner or occupier of any premises in which instruments of gaming are kept or used charges any commission for the use of his premises. The mere fact that instruments of gaming are kept or used therein for gaming is sufficient to characterise the same as a common gaming house. This change in the law was introduced by the United Provinces Public Gambling (Amendment) Act, 1925 ; see, Appendix. The decisions, therefore, in the cases *Lachchi Ram v. Emperor*, 20 A. L. J. 218, and *Durga Persad v. Emperor*, 21 A. L. J. 36., are now of little help in the United Provinces.

For comment on other points, consult Notes to section 4 of the Imperial Act, *supra*.

5. If the Magistrate of a district, or other
Power to enter and authorise Police to enter and search. *officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible*

information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming house,

he may either himself enter, or by his warrant authorise any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room or place,

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer find therein, whether or not then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorize such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall so entered when he or such officer has . .

believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

(Note.—For the United Provinces of Agra and Oudh, read “house, room, tent, walled enclosure, space, vehicle, vessel or place” for the words “house, walled enclosure, room or place” wherever they occur in this section. See section 3 of the U. P. Act I of 1917.).

NOTES.

General.—This section empowers a District Magistrate, a first class Magistrate or a District Superintendent of Police to enter and search, at any time, any premises believed by him to be used as a common gaming house, and to take into custody all persons and instruments of gaming and money found therein. These officers are also empowered to issue a warrant for the same purpose to be executed by a police officer declared competent by the Local Government in this behalf. A Police officer not authorized under this section has absolutely no right to enter and search any premises under this Act.

A District Magistrate or a Magistrate of the first class or a District Superintendent of Police, before entering a house must receive credible information that the house is used as a common gaming house. In the absence of such information, they cannot enter the house, nor can they issue a warrant to a police officer for that purpose. The information furnished must be to the effect that the house is actually used as a common gaming house, not that it is about to be so used. If the officer receiving the information doubts its genuineness, he is bound to make further inquiry before entering the house or issuing a warrant.

A warrant under this section can only be issued to a police officer. If it is directed to any other person it is illegal.

When a suspected house is duly entered under the provisions of this section, any money, securities for money and articles of value found in the house (and not on the persons of those arrested) and used for gaming may be seized. All instruments of gaming whether found in the house or on persons of those arrested may also be seized.

The effect of non-compliance with the provisions of this section is that the presumption

guilt against the accused (see section 6) does not arise, and the trying Magistrate is deprived of the power, which he would otherwise have, to examine under section 10, an accused person as a witness.

For similar law in other Provinces, see section 6 of the Burma Act I of 1899; section 6 of the Bombay Act IV of 1887; section 5 of the Bengal Act II of 1867; section 46 of the Calcutta Police Act, 1866; and section 42 of the Madras Act III of 1888.

Magistrate of a district.—That is, District Magistrate. See section 3 clause 2, Code of Criminal Procedure, 1898.

Other officer Invested.....Magistrate.—These words mean "Magistrate of the first class". See section 3, cl. 2, Code of Cr. Pro. 1898. See also, *Abbu Singh v. King Emperor*, 10 A. L. J. 169; 34 A. 597.

The appointment of a First Class Magistrate as a Sub-Divisional officer gives the officer in question certain additional powers in that particular area, but does not deprive him of all his powers as a Magistrate. Hence a search warrant issued by such an officer for the search of a house

outside the Tehsil of which he was Sub-divisional Officer, was held not to be illegal (*Abbu Singh v. King Emperor*, 10 A. L. J. 169.).

District Superintendent of Police.—These words do not include an Assistant Superintendent of Police and if he searches a house without a warrant issued under this section, the search is illegal (*Nankh Lal v. Emperor*, 23 A. L. J. 137.).

Credible information —Without such information action cannot be taken under this section. See *Q. v. Sabsookh*, 2 N. W. P. 476; *Crown v. Chunni Mal*, 19 P. R. 1871 Cr.; *Queen Empress v. Niaz Ahmad*, S. C. 203 Oudh. The mere report or information of a police officer is not credible information and a search warrant cannot be issued thereon (*Sandhi v. Crown*, 9 P. R. 1876 Cr.). But see, *Sh. Moti v. Emperor*, 9 N. L. R. 68; 19 I. C. 949; 14 Cr. L. J. 293; also *Ahmad Hasan v. Crown* 1926, A. I. R. Lahore, 454; 27 Cr. L. J. 990, in which the case of *Sandhi v. Crown*, P. R. 1876 Cr. was dissented from.

The words "credible information" as used in this section are not synonymous with credible evidence (*Emperor v. Abdus Samad*, 28 A. 210; 1905 A. W. N. 257.). The term 'credible information' includes any information which in

judgment of the officer to whom it is given, appears entitled to credit and which he believes. It is not necessary that it should be taken upon oath or affirmation (*Kada v. Empress*, 7 P. R. 1882 Cr.). It need not be in writing (28 A. 210.). It is not necessary that the informant should have knowledge; it is sufficient if he testifies to a reasonable suspicion (*E. v. Hiro*, 8 Cr. L. J. 182; 1 S. L. R. 64 Cr.) Nor is his motive in giving information material, it may be the mere hope of a reward (*E. v. Paman*, 8 Cr L. J. 186; 1 S. L. R. 67 Cr.).

Presumption.—Where a warrant is issued by a Magistrate under this section, it must be presumed to have been issued on credible information (*Sh. Mott v. Emperor*, 6 N. L. R. 68; 19 I. C. 949; 14 Cr. L. J. 293.). But see, 6 A. I. Cr. R. 409.

And after such inquiry.....necessary.—This is discretionary. The officer, after receiving information, is under no obligation to make any further inquiry unless he deem it necessary to do so. See, 8 Cr. L. J. 182 and 185. Of course if he doubts the truth of the information, he is bound to make further inquiry before entering or issuing a warrant for search of a house.

Has reason to believe.—The expression "reason to believe" is entirely different from the expression "cause to suspect." The former connotes a great deal more than is conveyed by the latter (*B. Walvekar v. Emperor*, 6 A. I. Cr. R. 409.). The information and inquiry must point to the existence of a common gaming house. And this should appear on the record. Where a warrant did not show that the officer issuing the same had reason to believe that the house was a common gaming house, and there was nothing on the record to show that such belief was entertained on credible information, and when the accused who were in the house at the time of the search were charged with and convicted of offences under the Act, held that under the circumstances, the convictions and sentences could not be maintained (*Emperor v. Chiranjī*, 1891 A. W. N. 111.).

A warrant did not state that credible information had been received that the house in question was used as a common gaming house, but merely that it was one in which gambling frequently took place, and no further evidence appeared on the record to show that credible information had been received that the house was a . .

gaming house. It was held that the warrant was informal, and the finding of instruments of gaming constituted no evidence of the existence of a 'common gaming house', 'as they were not found in pursuance of a search made in accordance with the provision of section 5 (*Emperor v. Ram Bharose*, 1890 A. IV. N. 226.).

It is only when, on the information supplied, the officer has reason to believe that a house is at present actually used as common gaming house, that he can proceed under this section. A search warrant can only be issued on credible information that the house is a common gaming house (*Crown v. Chunni Mal*, 19 P. R. 1871 Cr; *Emperor v Shikar Chand*, 1882 A. IV. N. 132.). Where the police report on which a Magistrate issued a search warrant, did not state that the house in question was used as a common gaming house, held that the Magistrate was wrong in issuing the warrant as there was nothing to show that the house was a common gaming house (*Q. E. v. Yusuf Hosain*, 1889 A. IV. N. 162.). Where the information before a Magistrate was, not that the house suspected was actually used as a common gaming house, but that it was about to be so used, held that the warrant issued by the

Magistrate under this section was illegal (*Kalir-Ram, v. Emperor, 19 A. L. J. 691.*).

The credible information must show that gambling has been carried on for the profit of the owner or occupier of the premises in question, and if this is wanting, a conviction cannot be sustained. Payment by the gamblers, of small sums as remuneration to those who minister to their comforts in the way of supplying drink and other refreshments represents no advantage whatsoever to any person who can reasonably be regarded as occupying, using or keeping the premises. The police is not at liberty to raid premises merely because a number of persons were collected there to gamble (*Nami Chand v. Emperor 62 I. C. 322; 22 Cr. L. J. 498.*).

The words "there is reason to believe" contained in a warrant are sufficient to show that the signatory had reason to believe, and acted on credible information within the meaning of this section (*Basant Mal v. Empress, 17 P. R. 1897 Cr.*) See also *Ahmed Hosen v Crown 1926 A. I. R. Lahore, 454; 27 Cr. L. J. 990*. But see *6 A. I. Cr. R. 409*, where it has been held that such a warrant is not a public record and no presumption of any kind attaches to it. Evidence, unless..

expresely dispensed with by law, ought to be required in every case that the essential preliminaries precedent to the issue of such a warrant have been complied with.

A person is said to have 'reason to believe' a thing if he has sufficient cause to believe that thing, but not otherwise. See section 26 I. P. C.

The provisions of this section and section 6 may cause great hardship if a Magistrate competent to issue a warrant, himself makes a raid without having good reason for believing that the premises to be raided constitute a common gaming house. The Magistrate ought to sift information most carefully before taking action under this section the effect of which is to throw on the accused the burden of proving his innocence by showing that the premises were not a common gaming house (*Emperor v. Sit Nyein*, 8. I.O. 989; 11 Cr. L. J. 746.). Search warrants are a species of process exceedingly arbitrary in character, and suspicion itself is no ground whatsoever for issuing them. They are always open to very serious objections and very great particularity is justly required by law in cases where they are authorized, before

the privacy of a man's premises is allowed to be invaded by the minister of the law (*B. Walvekar v. Emperor*, 6 A. I. C. R. 409.).

May either himself enter.—The only officers authorized to enter without a warrant are a District Magistrate, a Magistrate of the first class, and a District Superintendent of Police. No other Police officer is competent to enter a suspected house unless he has obtained from any of these officers a warrant under the provisions of this section.

Or by his warrant authorize.—Any of the officers empowered to enter without a warrant is competent to issue a warrant to a Police officer authorising him to effect entry into a suspected house. The warrant must however be issued only on credible information having been received previously. See *supra*, Notes under 'Credible information.' See *Queen-Empress v. Niam Ahmad*, S.C. 203 Oudh. Otherwise the warrant would be invalid and the entry and search made thereunder illegal, and the presumption under section 6 would not arise (*Queen-Empress v. Nga So. Gyi*, L. B. R. 1872-92, 53 and 407; *Ram Sarup v. King-Emperor*, 1 A. L. J. 115; *Emperor v. Ram Bharose*, 1890

A. W. N. 226; Hargovind v. Emperor, 10 A. L. J. 355.)

The presumption referred to in section 6 does not arise where the provisions of section 5 have not been complied with (*Emperor v. Shakar Chand, 1882 A. W. N. 132*). See also *18 A. 23*.

The execution of a warrant issued under this section cannot be left to the discretion of the police (*Queen Empress v. Nga Shan Gyl, L. B. R. 1872-92, 407.*).

Since the effect of non-compliance with the provisions of section 5 is that the presumption under section 6 does not arise, care should be exercised in drawing up warrants under this section.

• **Endorsement of warrant**—Search warrant issued under the Act are governed by those provisions of the Code of Cr. Pro. which provide for the issue of the warrants in general. Consequently a search warrant may be endorsed by a police officer to whom it was originally directed to another who is not of a rank below that authorized under the Act to enter and search. The Magistrate is not bound to name any particular officer to execute the warrant (*Emperor v. Kashi Nath, 5 A. L. J.*

59; *Emperor v. Abdus Samad*, 28 A. 210; 1905 A. W. N. 257.). A police officer to whom, by virtue of his office, a warrant is issued may pass it on to another Police officer for execution, provided the latter is by rank qualified to conduct searches under this section (*Mahadeo v. Emperor* 18 A. L. J. 333; 21 Cr. L. J. 737; 42 A. 385).

The only person authorized to make a search is the officer named in the warrant. The officer named in the warrant is not competent to authorise any one else to make the search (*Virr Singh v. Empress*, 22 P. R. 1895 Cr.).

The conditions under and the purposes for which, the person to whom and the authority by whom a warrant can be issued are to be determined with reference to the provisions of section 5 of this Act and not of the Code of Criminal Procedure.

WARRANTS HELD TO BE ILLEGAL.

A warrant is illegal:—

1. If there is no proof that it was issued on credible information that the house in question was a common gaming house (*Banwar v. Empress*, 11 P. R. 1895 Cr; *Empress v Churanji*, 18 W. N. 111).

2. If it is a general warrant (*Banwari v. Empress*, 11 P. R. 1895 Cr.).

3. If it is not signed by an officer authorized to issue the same (11 P. R. 1895 Cr.; *Ram Swarup v King-Emperor*, 1 A. L. J. 115.). Signing with a pencil is objectionable (*Narain Das v. King-Emperor*, 5 O. C. 37.).

4. If its execution is left to the discretion of the police (*Q. E. v. Nga Tu*, L. B. R. 1872-92, 86.).

5. If it is issued to an officer below the rank appointed by the Local Government in this behalf (*Empress v. Hardeo Das*, 1884 A. W. N. 286.).

6. If it does not contain special directions as to acts mentioned in clauses 3 to 6 of the section, when it is desired that any such acts should be done. Arrest of a person found in a common gaming house is illegal if the warrant does not authorise arrest (*Emperor v. Mulchand*, 4 Bom. L. R. 946.).

7. If it is for the search of any house which the police officer to whom it is issued might consider proper to search (*Har Govind v. King-Emperor*, 10 A. L. J. 355; 17 I. C. 576.).

8. If it does not correctly specify the house to be entered; but where a warrant was issued for the search of house No. 169 belonging to J. in Mohalla B., and the house in fact searched was house No. 169 in the occupation of J. but situate in an adjoining Mohalla S., and it appeared that there was no house No. 169 in Mohalla B., held that the wrong description did not vitiate the warrant nor did it render the presumption under section 6 inapplicable (*Emperor v. Jhunni*, 1905 *A. W. N.* 105.).

9. If it was issued on the mere information that a great deal of gambling was going on in a house giving rise to numerous offences (*Queen-Empress v. Yusuf Hosain*, 1889 *A. W. N.* 162).

10. If it does not specify the officer to whom authority is given to execute it (*Jamna Prasad v. King-Emperor*, 31 *A. L. J.* 601; 73 *I. C.* 518). See also *King-Emperor v. Shankar Dayal*, 1922 *A. I. R. Oudh* 224; 71 *I. C.* 62, where a warrant was held to be irregular as it was not addressed to a particular individual.

11. If it is issued by an officer not authorized under section 5 to do so.

12. If the boundaries of the house to be searched are not noted therein (*Jamna* ?).

v. King-Emperor, 21 A. L. J. 602.).

13. If the place or house to be searched is not specified therein (*Raja Ram v. Emperor*, 5 L. L. J. 429; 73 I. C. 521.).

14. If it does not bear the seal of the authority issuing it (*Mahajan Sh. v. Emperor*, 42 O. 708; 16 Cr. L. J. 336; 28 I. C. 672.). See also 18 B. 636. But see *Girdhari Lal v. Crown*, 23 P. R. 1910 Cr; 8 I. C. 137, where it was held to be a mere irregularity covered by section 537 of the Code of Criminal Procedure.

15. If it is signed by an unauthorized person (*Jagpat Keori v. King-Emperor*, 18 Cr. L. J. 526.).

16. If it misdescribes the person against whom it is directed (*Jamna Prasad v. King Emperor*, 21 A. L. J. 602.). See also 18 B. 636.

17. If it empowers to do acts not contemplated by the section. See 8. IV. R. 74 Cr.

18. If the Magistrate issuing the same signs it at a place outside the local limits of his jurisdiction (*Girdhari Lal v. Crown*, 23 P. R. 1910 Cr; 85 P. L. R. 1910.).

Effect of illegal warrants.—An illegal or irregular warrant renders section 6 inoperative so that the presumption therein laid down does not arise (*Empress v. Har Deo Das*, 1884 A. W. N. 286; *Ram Swarup v. King-Emperor*, 1 A. L. J. 115; *Emperor v. Ram Bharose*, 1890 A. W. N. 226; *Har Govind v. King-Emperor*, 10 A. L. J. 355; *King-Emperor v. Shankar Dayal*, 1922 A. I. R. Oudh, 224; *Kalu Ram v. Emperor*, 19 A. L. J. 691; *Crown v. Chunni Mal*, 19 P. R. 1871 Cr.). See also *Emperor v. Umerkhan*, 6 N. L. R. 168. Evidence may however be given to show that the house is a common gaming house (*Har Govind v. Emperor*, 10 A. L. J. 355; *Ram Swarup v. King-Emperor*, 1 A. L. J. 115; *Emperor v. Abasbhai*, 28 Bom. L. R. 272.). Irregularity in a warrant does not vitiate a conviction provided it can be supported on other evidence independent of the presumption created by section 6 (*Emperor v. Umerkhan*, 6 N. L. R. 168.). Nor can a person arrested in execution of of an illegal warrant be examined by a Magistrate as a witness under section 10 (*Nanke Lal v. Emperor*, 23 A. L. J. 137; *Kalu Ram v. Emperor*, 19 A. L. J. 691.). See also 1 A. L. J. 115.

WARRANTS, NOT INVALID.

A warrant is not bad if it is issued in the alternative to different police officers (*Basanta Mal v. Empress*, 17 P. R. 1897 Cr.); but it is irregular, if it does not contain the name of the person to whom it is issued and who is authorised to arrest thereunder (*King-Emperor v. Shankar Dayal* A. I. R. Oudh, 224; 9 O. L. J. 617.). See also 30 A. 60. Two or more houses may be specified in one warrant, provided they are clearly disunited in it (*Basanta Mal v. Empress*, 17 P. R. 1897 Cr.).

The mere fact that a warrant was defectively worded and was rather a warrant of arrest than of search, was held not to vitiate the trial (*Empress v. Man Singh*, 1884 A. W. N. 291.).

A wrong description given to a house which was merely a misdescription regarding the Mohalla in which the house was alleged to be situated, the house in fact being in an adjoining Mohalla, was held not to vitiate the warrant nor to render the presumption under section 6 inapplicable (*Emperor v. Jhunni*, 1905 A. W. N. 105; 2 Cr. L. J. 243.).

A warrant endorsed by the officer to whom it is issued to an other competent officer for execu-

tion is not invalid and a search made thereunder is lawful and gives rise to the presumption under section 6 (*Emperor v. Kashi Nath*, 30 A. 60 ; 5 A. L. J. 59 ; *Mahadeo v. Emperor*, 18 A. L. J. 383; 21 Cr. L. J. 737; 58 I. C. 241.). But in *Vir Singh v. Empress*, 22 P.R. 1895 Cr. (Punjab), it has been held that the only person authorised to make a search is the officer named in the warrant. He is not competent to authorise any one else to make the search. Also see *Lal Chand v. Queen-Empress*, P. R. 1895 Cr. (Punjab). For a similar view under the Burma Act I of 1899, see *Po Thwat v. Emperor*, 54 I.C. 57; 21 Cr. L. J. 9, in which the two Punjab rulings were followed.

A warrant is not bad because of its containing a direction to seize all moneys found on the people arrested in the gaming house (*Begumal v. Crown*, 10 S. L. R. 134; 37 I. C. 54.).

Where a warrant authorised a sub-inspector of police to enter and search the shop of the accused, whereas the warrant legally should have been issued to an Inspector, it was held that the irregularity would be covered by section 537 Criminal Procedure Code (*Empress, v. Musa*, 1884 A. IV. N. 59.); such an irregularity renders section 6 inapplicable to the case,

it does not render the things found (instruments of gaming etc.) inadmissible if they are otherwise relevant and admissible in evidence (*Empress v. Hardeo Das*, 1894 A. W. N. 286.). See also 9 A. 528.

Entry without authority.—A police officer who enters a house without any authority is a trespasser, and the presumption created by section 6 will not arise from the fact he found in it instruments of gaming and arrested persons present therein (*Ram Sarup v. Emperor* 1 A. L. J. 115.).

Presumption of guilt.—Before any presumption of guilt can be drawn against the accused under section 6 it is incumbent on the Magistrate trying the case to satisfy himself that the warrant issued under this section was a valid one. See 9 Cr. L. J. 267; 1 S. L. R. 27 Cr.

Authorise any officer of Police.—A warrant can be issued only to a police officer. It is invalid if it is issued to a person other than a police officer. The finding of instruments of gaming in course of a search under a warrant so directed, would not give rise to the presumption referred

to in section 6 of this Act. See *Crown v. Chela Ram*. 10 Cr. L. J. 205.

Not below such rank.....shall appoint.—For Notifications empowering police officers to exercise powers described in this section, see, 'List of Local Rules and Orders' for each Province. Also see Appendix.

These words clearly prohibit the issue of a warrant to a police officer of a rank below that appointed by the Local Government in this behalf. And it seems that a warrant issued to a police officer not competent under this section would be no warrant at all, and any action taken on the authority thereof would be absolutely illegal. But see 1884 A. W. N. 60 and 286, where it was held to be a mere irregularity curable under section 537 of the Code of Criminal Procedure, though it rendered section 6 inapplicable.

Lieutenant-Governor.—See Notes to section 1 *supra*. This Act has been applied to the cantonments of Mhow, Nimach, Nowgong and Sehore, the Indore Residency Bazars and the Civil Lines of Nowgong. There the power of a Lieutenant-Governor or Chief Commissioner under this sec.

tion is exercised by the Agent to the Governor General in Central India. Vide Foreign Department Notification No. 2365-I-B., dated the 14th November, 1912.

To enter.—A district Superintendent of Police is authorised to enter without warrant. So also a District Magistrate or a Magistrate of the first class.

Any police officer other than a District Superintendent of Police, who enters without a warrant is a mere trespasser (*Ram Sarup v. Emperor*, 1 A. L. J. 115.).

The officer authorised must himself enter the suspected premises (31 B. 438).

With such assistance.....necessary.—These words indicate that where a District Magistrate or a first class Magistrate or a District Superintendent of Police himself enters a house, he may authorise a competent person to perform all or any of the acts mentioned in paras 3 to 6 of this section.

A police officer incompetent to enter without a warrant issued under this section, may so enter if the raiding party is headed by a competent

Magistrate. See *Emberor v. Phullu*, decided by the Allahabad High Court on the 25th May, 1926. It is however essential that the house should be actually entered by the Magistrate. See 31 B. 438.

By force if necessary.—Use of force is improper unless there is actual resistance or obstruction.

Any such house etc.—That is, a house in respect of which 'credible information' as mentioned in para. 1 of this section has been furnished.

Authorise such officer to take into custody.—This ought to be mentioned in the warrant. The arrest of a person found in a gaming house, without a warrant authorizing arrest is illegal (4 Bom. L. R. 945).

Persons whom he or such officer find therein.—Only those persons can be taken into custody who are present inside the house and have been found therein by the officer authorised under this section. See Notes under 'Found' in section 4, *supra*. A person not found inside the house by the officer at the time of the entry cannot be subsequently arrested and tried. The gist of an

offence under section 4 is *to be found* in a common gaming house.

Whether or not then actually gaming.—This is in conformity with the presumption laid down in section 6 and in the latter portion of section 4.

And may seize.—The only articles that can be seized under this section are :—(1) instruments of gaming ; (2) money ; (3) securities for money ; and (4) valuable articles. These things must be found inside the house entered and there must at the same time exist a reasonable suspicion that they were used or meant to be used for the purpose of gaming. Absence of either of these two conditions would render the seizure illegal.

Money found on the *persons* of those arrested cannot be seized (*Chaturbhuj v. Emperor*, 68 I.C. 832; 23 Cr. L. J. 608; *Ram Sakhi Ram v. Emperor*, 19 A. L. J. 766; 23 Cr. L. J. 648; 68 I.C. 408.). Also see, *Khair Din v. Emperor*, 27 Cr. L. J. 251.

Which are found therein.—See notes under 'And may seize', *supra*.

And may search.—A search of a room not belonging to or occupied by the person mentioned in the warrant is not justified (*King-Emperor v.*

Shankar Dayal, 1923 *A.I.R. Oudh*, 224; 71 *I. C.* 62.). The search should be conducted in accordance with the provisions of section 103 of the Code of Criminal Procedure. That is, before making a search the officer should call upon at least two respectable residents of the locality to witness the search. The search should be made in their presence. A list of the articles seized during the search should be prepared by the officer and attached by the search witnesses. The list should also indicate the place where the articles seized were found. The occupier of the premises or somebody on his behalf should be permitted to attend the search, and at his request a copy of the said list signed by the search witnesses should be given him.

But according to the opinion of the Punjab High Court, section 103 of the Code of Criminal Procedure has no application to a search under Gambling Act, because the search is not made under Chapter VII of the Code (*Khilinda Ram v. Crown* 3 *L.* 359 *I. C.* 845.).

Section 103 of the Code of Cr. Pro. applies whatever the offence may be and is not confined to searches under the Burma Gambling Act (*Emperor v. Khan Haw* 10 *I. C.* 756; 12 *Cr L. J.* 251.).

As to the application of the provisions of section 103 of the Code of Criminal Procedure when a Magistrate himself accompanies a raiding party, see the Allahabad case *Emperor v. Phullu*, decided on the 25 May 1926.

Unauthorised search.—A search made without authority or under an illegal warrant is illegal. An illegal search renders the presumption under section 6 inapplicable to the case which may however be proved by other evidence (*Hargobind v. King-Emperor*, 10 A. L. J. 355; 35 A. 1.). Also see Notes above. The illegality of a search, though it does not raise the presumption of guilt against the accused, is no bar to a consideration of the evidence discovered by the search (*Kadir Mahomed v. Crown*, 10 S. L. R. 137; 37 I. C. 33; *Emperor v. Abasbhai*, 28 Bom. L. R. 272.).

Has reason to believe.....concealed therein.—All parts of the house and the person of those arrested may be searched but only for the purpose of discovering instruments of gaming. If the officer has no sufficient ground for believing that any instruments of gaming are concealed, he should refrain from making a search.

And also the persons etc.—See Notes above. The search of persons of those arrested is limited to recovery of the instruments of gaming (*Khair Din v. Emperor*, 27 Cr. L. J. 951.).

All instruments of gaming found upon such search.—Only the instruments of gaming found in course of search of the house or of persons of those taken in custody are liable to seizure. The officer is not empowered to seize anything else found upon such search. Cash, currency notes and ornaments found on the persons of those arrested in a common gaming house cannot be seized, even though they may have been used or intended to be used for the purpose of gaming. See 21 Cr. L. J. 384; 55 I. C. 864. Also see Notes to section 8, *post*.

Evidence.—If the warrant on the face of it shows that it was issued on information believed by the issuing officer to be credible, then independent evidence on the point is unnecessary at the trial, because the presumption is that official acts were regularly performed (*Chote Lal v. King-Emperor*, 1024 A. I. R. Oudh, 403; 11 O. L. J. 347; 81 I. C. 186.). The prosecution need not give evidence about the information laid, and of inquiry, if any, held thereupon (*Em-*

peror, v. Maxhar Ali, 29 P. R. '1881 Cr). But in *B. Walvekar v. Emperor*, 6 A. I. Cr. R. (1926), 409, it has been held that a warrant must be proved in the regular way; it is not a public record, and therefore no presumption of any kind attaches to it.

A magistrate ought not, without giving evidence in the usual way, to import into a case his own knowledge as to the circumstances under which a warrant was issued (*Narain Das v. King Emperor*, 5 O. C. 37.).

U. P. Amendment

Section 5.

NOTES

For the words 'house, walled enclosure, room or place' wherever they occur in this section, read 'house, room, tent, walled enclosure, space, vehicle, vessel or place'. See section 3 of the U. P. Public Gambling (Amendment) Act, 1917. See Appendix.

Instruments of gaming.—See Notes to section 1, *supra*.

For notes on other points consult commentary on section 5 of the Imperial Act, *ante*. 'Imperial Act' means the Public Gambling Act III of 1867, unaffected by the provisions of any United Provinces Act.

6 *When any cards, dice, gaming-tables, Finding cards etc. cloths, boards or other instru-
in suspected houses, to be ments of gaming are found in
evidence that such hou any house, walled enclosure,
ses are common gaming room or place, entered or search-
houses ed under the provisions of the last preceding
section, or about the person of any of those who
are found therein, it shall be evidence, until the
contrary is made to appear, that such house, wall-
ed enclosure, room or place is used as a common
gaming house, and that the persons found therein
were there present for the purpose of gaming,
although no play was actually seen by the Magis-
trate or Police Officer, or any of his assistants.*

(vote—For the United Provinces, read "house, room, tent, walled enclosure, space, vehicle, vessel or place" for the words "house, walled enclosure, room or place" in the section. See section 3 of the U. P. Act I of 1917. see Appendix)

Notes.

General.—This section creates a presumption of guilt against the accused persons. The presumption arises only when the provisions of section 5 have been strictly complied with. If the provisions of section 5 have not been observed, this section will be inoperative and the court will not be justified in treating the instruments of gaming found in course of search as evidence of the existence of a common gaming house. The prosecution may, however, by direct evidence, prove the premises to constitute such a house.

The presumption arises from the finding of instruments of gaming inside the premises searched or on the persons of those arrested therein. The accused is entitled to rebut the presumption and to adduce evidence for that purpose.

Under the ordinary rules of law, an accused person is considered to be innocent unless and until his guilt is established by satisfactory evidence. Here he is guilty in the eye of the law so long as he does not prove his innocence. So that, while under the ordinary rules of evidence, the prosecution must bring home to the accused the offence with which he is charged, here the

burden is on the accused to show the accusation to be baseless.

The prosecution, however, has to prove that instruments of gaming were discovered inside the premises entered and searched in accordance with the provisions of section 5

As this section departs from the ordinary rules of evidence and places the burden of proof on the accused, this Act must be strictly construed.

The provisions of this section seem to rest on a recognition by the Legislature of the extreme difficulty in proving by direct evidence what was going on in an alleged common gaming house at the time of police raid. Generally speaking, confusion amongst the players is bound to follow, and it may then be supposed to be a well nigh impossible task to ascertain anything beyond securing the instruments of gaming and the persons found therein.

For similar provisions in other enactments, see, section 7 of the Bombay Act, IV of 1887 ; section 7 of the Burma Gambling Act, 1899 ; section 6 of the Bengal Public Gambling Act, 1867; and section 43 of the Madras City Police Act, 1838.

Cards, dice, gaming-tables, cloths, boards or other instruments of gaming.—The words used in section 4 are “cards, dice, counters, money, or other instruments of gaming.”

Other instruments of gaming.—See Notes to section 1, *supra*.

The mere finding of ‘cowries’ does not raise the presumption allowed by this section, as ‘cowries’ are not instruments of gaming (*Queen-Empress v. Bharsani*, 18 A. 23 ; *Ganda v. Empress*, 3 P. R. 1896 Cr; *E. v. Mt. Kashi*, 12 C. P. L. R. 17 Cr.). But if they are proved to have been used as such instruments, the presumption will arise. See *Emperor v. Balu Misr*, 10 A. 311 ; 1897 A. W. N. 117. For a contrary view see, *Ram Charan v. King-Emperor*, 5 A. I. Cr. R. 256 ; 1925 A. I. R. Oudh. 674, where the decision in 18 A. 23, was dissented from in view of the amendment introduced by the U. P. Act of 1917. Also see, *Queen Empress v. Makund Ram*, 25 C. 432.

Where the alleged instruments of gaming are articles neither devised as instruments of gaming nor intended to be so used, evidence is necessary to prove that such articles were actually used for

the purpose of gaming, before this section can apply. The statement of the arresting Police officer that he had information that the articles were used as instruments of gaming is insufficient, as the information so given to the police officer is no evidence (*Ah Ngwe v. King-Emperor*, 9 L. B. R. 205, 50 I. C. 59.).

Are found in any house etc.—The instruments of gaming must be found *inside* the house; it is not sufficient if they are found outside the place entered and searched. See, *Queen-Empress v. Kayi, Bhimji*, 17 B. 184, where it was held to be insufficient that the wagers were made in the place searched, by means of some article outside the place.

The mere finding of cards, dice etc., without the house being searched under the provisions of section 5, is no evidence that the house is a common gaming house (*Crown v. Chunn Mull*, 19 P. R. 1871 Cr)

Entered or searchedlast preceding section.
—See Notes to section 5, *supra*.

The provisions of section 5 must be strictly complied with, else this section would be inoperative (*Emperor v. Shikar Chand*, 1832 A. IV. IV.

132.). If any warrant for entry or search is issued, it must be one under section 5.

It is only in the case of a house searched under section 5 that a presumption arises from the mere discovery of cards, dice etc., that it is a common gaming house (*Queen-Empress v. Nga-So Gyi*, L. B. R. 1872-92, 53; see also pp. 407 and 548. *Queen v. Subsookh*, 2 N. W. P. 476.).

Where a Sub-Inspector of police not authorised to do so, enters an alleged gaming house and makes arrests, the presumption under this section does not arise. See 4 C. 710.

If a house has been entered and searched in contravention of the provisions of section 5, the result is that no presumption arises under this section and that witnesses cannot be examined under section 10 of this Act (*Kalu Ram v. Emperor*, 19 A. L. J. 691; *Ram Sarup v. King-Emperor*, 1 A. L. J. 115.). But the fact of the premises having been used as a common gaming house may be proved *aliunde* (1 A. L. J. 115.); Evidence may be given to show that the house was a common gaming house (*Hargovind v. King-Emperor*, 10 A. L. J. 355; 17 I. C. 576.); and a Magistrate can convict provided there is

proof independent of the presumption (§ C. 659.) Articles found in course of a search under an illegal warrant can be put in evidence against the accused (*Emperor, v Abasbhai*, 28 Bom L. R. 272.)

But if the house is searched according to the provisions of section 5, the finding of instruments of gaming therein is sufficient under this section to raise the presumption that it is a common gaming house, and it is then unnecessary to prove that the owner or occupier of the house received from the gamblers any commission for its use (*Sita Ram v. King Emperor*, 1924 A I. R. All. 186; *Emperor v. Po Yin*, 4 Bur. L. T. 11, 9 I C. 450, *Tillock Chand v. Emperor*, 26 Cr L. J. 1356.) Still where the case rests solely on the presumption created by this section, the court should very carefully consider whether the legal presumption has been rebutted by the circumstances of the case and by the evidence produced on behalf of the accused (*T.R.S. Chari, v. Emperor*, 10 I. C. 792.) Where the circumstances are such that it cannot be said that the instruments of gaming found in the premises searched were kept or used for the profit or gain of the owner or occupier thereof, a conviction cannot be sus-

tained in the absence of direct proof of such profit or gain having been made (*Lachchi Ram v. Emperor*, 20 A. L. J. 218.). Due weight should be given to any circumstance tending to show the presumption to be unwarranted. For instance, if the premises were used as a place of recreation, the presumption should be deemed to have been shaken. See 3 I. C. 895.

**On or about the personfound there-
in.**—This is in keeping with the provisions of section 5 which permits seizure of all instruments of gaming whether found in the gaming house or on the persons of the accused.

It shall be evidence.—The finding of instruments of gaming affords presumptive proof of the existence of a common gaming house. But the discovery of instruments of gaming in course of a search under an illegal warrant does not raise a presumption under this section (*Kalu Ram v. Emperor*, 19 A. L. J. 691; see also *Emperor v. Umerkhan*, 6 N. L. R. 168.).

The lapse of a long interval between the issue of a warrant and the execution thereof reduces the weight of evidence treated as incriminating in this section (*Emperor v. Alloomiya*, 28 B. 129.).

The search of the persons of the accused long after their arrest may be a circumstance rendering the presumption inapplicable.

If the warrant under which a house is searched is defective, the finding of the instruments of gaming will not be evidence to the extent mentioned in this section (*Emperor v. Abdus Samad*, 25 A 210; 1905 A. W. N. 257.). Where the provisions of section 5 have not been complied with, the finding of the instruments of gaming in a house does not raise the presumption referred to in this section, but the fact that the house is a common gaming house may be proved by other evidence (*Ram Sarup v King-Emperor* 1 A.L.J. 115; *Har Gouind v King-Emperor*. 10 A. L. J. 355; *Emperor v. Abasbhat* 28 Bom. L. R. 272.). If a house is searched, but the search is not duly made according to the provisions of section 5, a conviction cannot be sustained merely on the strength of a presumption under this section (*Emperor v. Umerkhan* 6 N. L. R. 168.).

Genesis of Presumption.—The finding of instruments of gaming has been considered to be sufficient evidence, because the 'credible information' furnished under s. 5 clause 1 receives corroboration from the fact of subsequent discovery of,

instruments of gaming in the house. The genesis of the presumption is traceable not to the respectability or impartiality of the search witnesses, but to the sufficiency of the grounds on which a search warrant was issued and the subsequent finding of the instruments of gaming (*Emperor v. Khan Haw* 10 I. C. 796.). It is therefore absolutely necessary for the trying court to satisfy itself before seeking the aid of this section that action under s. 5 was taken on credible information.

The presumption arises from the cards etc., being found and men sitting round though no play is going (*Emperor v. Allomiya*, 28 B. 129.). Where a number of persons were found in a house sitting in a circle gaming with dice and having money and *cowries* before them, it was held that these facts were sufficient evidence (*Queen-Empress v. Bai Vaju*, 22 B. 745.).

The existence of any exculpatory circumstances side by side with the discovery of instruments of gaming bars a presumption under the section. See, *Lachchi Ram v. Emperor* 20 A. L. J. 218; 65 I. C. 852, in which it was held that where the instruments of gaming found in the shop of an accused person could not be said to have been kept or used for his profit or gain,

he could not be convicted of an offence under s. 3, in the absence of direct evidence showing that the instruments of gaming were kept or used for his profit or gain. See Notes under the next heading.

Until the contrary is made to appear.—The presumption created by this section is rebuttable. See, *41 I. C. 997*; *3 S. L. R. 80* The burden is on the accused to show that the presumption is not warranted. The words "made to appear" indicate that the accused is entitled to show the presumption to be inapplicable, even without producing any evidence. They are not synonymous with words "until the contrary be proved" used in s. 4.

Where numerous packs of cards as well as some dice were found in a house, but it was proved that the persons who were playing cards in the house were nearly all employees of the house-owner and were playing for recreation and that though the play was for money, no commission was taken, *held* that the presumption raised by the discovery of the packs of cards and the dice had been rebutted (*Emperor v. Sein Kee*, *21 L. J. 4*; *54 I. C. 52.*).

Where instruments of gaming were found in a house, but it appeared from the circumstances that the object of the accused in gambling was merely to pass time in a common friendly amusement, the idea of making any gain being entirely foreign to them all, it was held that the presumption under this section had been rebutted by the absence of proof that the owner of the house stood to gain by the gambling (*Ram Charan v. King-Emperor*, 1925 A. I. R. Oudh, 674.). See also *Ram Shankar v. King-Emperor*, 20 O. C. 4; 39 I. C. 334, which was followed in this case.

The fact that the accused occupied the premises temporarily while out for a picnic party and were playing there for small stakes, was held to be sufficient to rebut the presumption that the premises constituted a common gaming house (*Emperor v. Chinnan Lal Manaklal*, 19 Bom. L. R. 693; 41 I. C. 997.).

In *Tyabali v. Crown*, 3 S. L. R. 80. the presumption was held to have been rebutted by the fact that the warrant for search was issued on the sworn information of an avowed gambler, that the accused all belonged to the same sect and were at the time of search preparing tea, that crickett-

ing things were found as well as a money-box with a little cash, and that the accused alleged that the premises were used by them as a club. See also *19 Bam. L. R.* 693.

Where there is no independent evidence to prove that commission was actually charged by the accused whose conviction for keeping a common gaming house is based merely on the presumption laid down in this section, it is necessary to consider very carefully whether the presumption has been rebutted by any circumstances of the case and by the evidence produced for the defence (*T. R. S. Chari v. King Emperor* 10 *I. C.* 792.).

Presumption on occasions of Festivals.—The presumption arising under the Act is not so strong or can be more easily displaced when gambling takes place openly on the Diwali occasion, as or than when it takes place in a private house at other times (*King-Emperor v. Shanker Dyal*, 1922 *A. I. R. Oudh* 224; 25 *O. C.* 111.).

Proof of commission unnecessary.—Where a presumption is lawfully made under this section, it dispenses with the need of direct evidence that a commission was being taken by the keeper of the gaming house (*Sita Ram v. Emperor*, 24

L. J. 934; *Emperor v. Po. Yin*, 9 *I. C.* 450 ; 12 *Cr. L. J.* 80.).

When Presumption does not arise.—No presumption arises under this section unless there is evidence to prove that the articles seized as gaming instruments, which are neither devised as such instruments nor ordinarily intended to be so used, were actually used for the purpose of gaming (*Ah Ngwe v. King Emperor*, 9 *L. B. R.* 205; 50 *I. C.* 59.).

That such house.....for the purpose of gaming.—The presumption under this section is twofold: (1) That the premises in which the instruments of gaming are found are used as a common gaming house ; and (2) That the persons found inside the premises were there for the purpose of gaming. The second part is similar to the presumption contained in s. 4. It is to be noted that the language of this section does not warrant a presumption *against any particular person as being the keeper of a common gaming house.* The presumption is that the premises were used as a common gaming house, that cards etc., had been played there, that the persons on the premises were gambling (*Tilock Chand v. Emperor* 89 *I. C.* 396; 26 *Cr. L. J.* 1366.).

Although no play was actually seen.— Under section 4 a mere spectator is presumed to be guilty only if he is found in a gaming house while any game or play is going on therein. Under section 6 it is immaterial whether any persons found inside a house searched were or were not actually gambling at the time of the search; it is the fact of the discovery of instruments of gaming in the house which alone gives rise to the presumption. The presumption arises from cards etc., being found and persons sitting round, though no play is going on (*Emperor v. Alloomiya*, 28 B. 129.).

U. P. Amendment

Section 6.

NOTES.

Instruments of gaming.—See Notes to section 1, *supra*.

Cowries are instruments of gaming in view of the amendment introduced by the U. P. Act I of 1917. The decision to the contrary contained in *Queen-Empress v. Bharsani*, 18 A. 23, is no longer good law. The finding of *cowries* in

house searched, under the provisions of section 5 gives rise to the presumption laid down in section 6 (*Ram Charan v. King-Emperor*, 5 A. I. Cr. R. 256; 1925 A. I. R. Oudh, 674.).

Are found in any house.—In a recent Allabad case, the question as to presumption arising from the discovery of certain documents in course of a search was considered. The case against the accused was that *S* one of the accused kept a common gaming house for betting on price of opium, and in order to catch him in his trade, the police deputed one *M* to go and enter into betting with him. *M* accordingly went to *S* with a rupee and on inquiring as to what were the odds against the figures 3 and 7 was told that it was 2 for Rs. 100. Thereupon the rupee was handed over to *S* who gave a piece of paper to the second accused *P* and asked him to write on it, which having been done the paper was given to *M*. Just then the police who were in waiting came up and seized the paper. The house of *S* was searched and certain documents were seized. It was held that these documents did not establish any particular case against *S* beyond this, that possibly he was himself in the habit of gambling with others by telegraphic and telephonic

communications. There was not the slightest evidence that the alleged betting with S was going to be on the sale-price of any commodity and therefore no offence had been proved (*Sarnimal v. Emperor, Criminal Revision, decided on February 10, 1926.*).

For comments on other points, consult notes to section 6 of the Imperial Act.

(Note.—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any U.P. Act.).

7. *If any person found in any common gaming house entered by any*
P *penalty on persons*
arrested for giving false *Magistrate or officer of Police*
names and addresses *under the provisions of this Act,*
upon being arrested by any such officer or upon
being brought before any Magistrate, on being
required by such officer or Magistrate to give his
name and address, shall refuse or neglect to give
the same, or shall give any false name or address,
he may, upon conviction before the same or any
other Magistrate, be adjudged to pay any penalty
not exceeding five hundred rupees, together with
such costs as to such Magistrate shall appear
reasonable, and on the non-payment of such
penalty and costs, or in the first instance, if to

such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Notes.

General—This section provides additional punishment for refusal by persons found in a common gaming house, to disclose their names or addresses when required to do so. But the conviction of such persons under section 3 or section 4 is a condition precedent to imposing a penalty under this section. If the trial results in an acquittal, no action under this section can be taken against the persons so acquitted.

The power conferred by this section is permissive only, and the trying Magistrate, even in case of conviction, is not bound to proceed under this section.

This section has no application to a person convicted under section 13 of this Act, nor where the provisions of section 5 have not been complied with. The provisions of this section purport to facilitate the ascertainment of any previous conviction rendering the accused liable to enhanced punishment under section 15. *Cf.* section 7 of the Bengal Public Gambling Act, 1867.

Person found in any common gaming house.—It is not necessary that he be arrested inside the house; it is sufficient if he has been seen inside the house by the officer at the time of the entry.

Entered by any Magistrate.....of this Act.—The premises must be entered in accordance with the provisions of section 5. See section 5, *supra* and Notes thereunder.

If the premises have been entered under the provisions of any other enactment, this section will be inoperative.

Upon being arrested.....officer.—It is immaterial whether the arrest was made inside the house at the time of the entry or afterwards outside it. All that is necessary is that the accused should be observed by the officer inside the house at the time of the entry.

Or upon being brought before any Magistrate —That is, when he is produced before a Magistrate for trial for an offence under section 3 or section 4 of this Act.

The accused is liable under this section if he gives a false answer to an inquiry as to his name and address whether the inquiry be made by the arresting officer or by a Magistrate before whom he has been produced for trial.

On being required by such officer or Magistrate.
 —This is essential. Until inquiry has been addressed to an accused person, he is not liable under this section for not disclosing his name and address of his own accord.

The accused should have been asked by the arresting officer *after the arrest*, or by a Magistrate when he (accused) is produced to give his name and address. If the accused gives a false answer to a question put by any one else or before he is actually arrested, he is beyond the purview of this section.

Shall refuse or neglect.....name or address.—
 The accused is liable if he (1) plainly refuses to disclose his name and address; or (2) omits to do so; or (3) gives a false name or address.

The word 'neglect' means 'intentional omission.' If the accused is physically incapable of making an answer he is not guilty of *neglect*. Similarly a false answer should be given deliberately with the intent to deceive. A false answer made simply through some misunderstanding is outside the scope of the section.

See notes on 'He may', *infra*.

It is immaterial whether the officer or the Magistrate does or does not know the name and address of the accused.

He may.—These words show that the convicting Magistrate is not bound to impose a penalty under this section. He is to decide whether the omission was merely accidental or whether the accused withheld the information wilfully with a view to deceive. In the former case the accused should not be punished under this section.

Upon conviction beforeMagistrate.—Only a trying Magistrate is competent to impose a penalty under this section; it is immaterial whether he is or is not the Magistrate who required the accused to give his correct name and address. It is absolutely necessary that the trial should end in a conviction of the accused person under section 3 or section 4, before he can be punished under this section. Proceeding under this section is illegal if the trial results in an acquittal.

Or in the first instance.—That is, imprisonment may be awarded either as substantive punishment or in default of payment of and costs imposed. ⁽¹⁾Imprisonment cannot

inflicted in addition to a penalty.

U. P. Amendment.

Section 7.

NOTES.

Common gaming house.—See Notes to section 1, *supra*.

For comments on other points, consult notes to section 7 of the Imperial Act.

(Note—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any United Provinces Act.).

8. On conviction of any person for keeping

On conviction for or using any such common gaming house, or being present there-in for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found there-in to be destroyed, and may also order all or any of the securities for money and other articles.

seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited ; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

NOTES

General—This section empowers a Magistrate trying an offence under s. 4 or the offence of keeping or using a common gaming house under s. 3 of this Act, to order, in case of conviction, the destruction of all the instruments of gaming found in the common gaming house. He is also competent to order the sale of any of the securities and articles seized in accordance with the provisions of section 5, and the proceeds so realized together with the money found and lawfully seized in the common gaming house to be forfeited.

The Magistrate is not bound to make an order for the destruction of the instruments of gaming. The power conferred is merely permissive.

The Magistrate may or may not order forfeiture, according to his discretion. But an order of forfeiture cannot be passed unless the trial results in a conviction. An order of forfeiture

under this section is illegal if the accused is convicted of an offence under section 113 of this Act.

For similar provisions in other enactments—see s. 15 of the Burma Act, I of 1899; s. 47 of the Madras City Police Act, 1888; s. 8 of the Bengal Public Gambling Act, 1867; and s. 8 of the Bombay Prevention of Gambling Act, 1887.

On Conviction.—This is necessary. If the trial ends in an acquittal, an order under this section cannot be made. Forfeiture of property can be ordered only in cases where there is a conviction and is restricted to the property belonging to the person convicted (*Jiwan v. Empress*, 5 P. R. 1898 Cr.).

See *King-Emperor v. Phullu and others* (Allahabad case decided on the 25th May, 1926.).

For keeping or using any such.....purpose of gaming.—That is, the conviction should be one for an offence under section 4 or under section 3 para. 1 for keeping or using a common gaming house.

The words 'such common gaming house' mean a common gaming house entered by a Magistrate or Police officer in accordance with the provisions of section 5. See section 7. The word 'such'

refers to the words "entered by any Magistrate or officer.....Act" used in section 7.

No order of forfeiture *under this section* can follow a conviction for an offence under section 13 (*Emperor v. Tota* 26 A. 270; 1904 A. W. N. 11; *Sant v. Empress*, 18 P. R. 1891 Cr.). See also *Q. E. v. Anant*, S. C. 63 Oudh; *Maturwa v. Emperor*, 16 A. I. J. 418.

May order all the instrument.....destroyed.—The Magistrate is not bound to order destruction of the instruments of gaming. The power given is merely permissive and is to be exercised only when there is a conviction. See *Queen Empress, v. Kanji Bhimji*, 17 B. 184. Destruction may be ordered only of those instruments of gaming which are found inside the house and not of those found on the persons of the accused in course of a search under the provisions of section 5. See section 8 of the Bombay Prevention of Gambling Act, 1887, under which all instruments of gaming whether the same are found inside the common gaming house or on the persons of the accused, may be ordered to be destroyed, 'Found' means found in course of a search under the provisions of section 5. An order for the destruction of the instruments of gaming seized under section 13 is not an order under this section.

And may also order all or any of the securities.....converted into money.—‘Other articles seized’ means articles of value found and seized in course of a search under section 5. See para 4 of section 5, *supra*. The articles liable to seizure and forfeiture are limited to articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming, and found within the premises (*Emperor v. Rasul Gulab Kadia*, 40 I. C. 311; 19 Bom., L. B 352.).

The instruments of gaming cannot be ordered to be sold. That may act as an inducement to others to indulge in gaming.

The word ‘seized’ means seized lawfully in accordance with the provisions of section 5. Any articles seized in contravention of the provisions of that section cannot be sold or forfeited. It is discretionary with the Magistrate to order the sale of all the article and securities for money seized or only a portion thereof. Any portion not sold, should be restored to the accused entitled thereto.

The proceeds thereof with all moneys.....forfeited —The money realised by sale and the money found in the common gaming house may all be forfeited. Only the value of the

articles sold, and not the articles themselves can be confiscated.

'Money seized therein' means money seized in a common gaming house on an entry under section 5 of this Act. Section 5 permits seizure of such moneys and securities and articles as are found *in the house* entered and not of those found on the *persons* of the accused. Thus, under this section the law does not contemplate confiscation of money etc. found on the persons of those convicted of an offence under section 3 or section 4. None of the money found on the persons of the accused can be forfeited (*Tulla v. Emperor*, 17 A. L. J. 368; *Ram Sakhi Ram v. Emperor*, 10 A. L. J. 765; *Chaturbhuj v. Emperor* 68 I. C. 832; 23 Cr. L. J. 608.). But the money seized in the house can be confiscated (*Emperor v. Kifayat*, 17 A. L. J. 64; *Chaturbhuj v. Emperor*, 68 I. C. 832). Money found on the table or floor or other places in a common gaming house when it is raided can be seized and forfeited under this section (*Ram Sakhi Ram v. Emperor*, 10 A. L. J. 768; 22 Cr. L. J. 648; 63 I. C. 408.). If the accused was concealing money in his 'dhoti,' it was on his person and cannot be confiscated (*Ram Sakhi Ram v. Emperor*, 22 Cr. L. J. 648.). In a Madras case it was held that money found

in a gambler's waistcoat pocket could not be confiscated under section 517 Cr. Pro. Code. in the absence of evidence showing that the money had been actually staked (37 *M. L. J.* 253; 41 *M.* 644.).

It is clear from the letter part of this section that the power of forfeiture really is confined to those article which are not instruments of gaming and which have been seized in the house. The power of forfeiture does not extend to articles found on the persons of the accused, which are not instruments of gaming. Cash, currency notes and ornaments found on the persons of those arrested in a gaming house cannot be treated as instruments of gaming even though they may have been used or intended to be used for the purpose of gaming. They cannot be ordered to be forfeited to the Government. The power of forfeiture extends only to securities for money and other articles lawfully seized *in the house* which are not instruments of gaming (*Sada Shriv Bab Habbu v Emperor*, 21 *Cr. L. J.* 384; 55 *I. C.* 864; 44 *B.* 686.).

To justify forfeiture, it is necessary that the money etc., seized should be reasonably suspected to have been used or intended to be used for

the purpose of gaming. Money not so employed or meant to be employed cannot be confiscated under this section. The law does not contemplate confiscating money when the money is not being used for the purpose of gaming (*Ram Sakhi Ram v. Emperor*, 22 Cr. L. J. 648; 19 A. L. J. 765; 63 I. C. 403.). See section 5, *supra*.

It must be judicially clear that the money or articles seized are reasonably suspected to have been used or intended to be used for the purpose of gaming before they can be forfeited; though even then the Magistrate has discretion to return them in whole or in part to whom they belong. (*Lachmi Narain Marwari v. Emperor*, 4 Pat. L. J. 612; 1924 A. I. R. Pat. 42.).

Thus, forfeiture can be ordered only if the following conditions are satisfied:—

1. The money or other articles sought to be forfeited should have been lawfully seized under the provisions of section 5;

2. They should have been found in the common gaming house and not on the persons of the accused;

3. They should be reasonably suspected to have been used or intended to be used for the purpose of gaming ; and

4. They should not be instruments of gaming.

Or, in his discretion.....thereunto entitled.—The Magistrate is not bound to order forfeiture even if he convict the accused. He may in his discretion order the return, in whole or in part, of the money and articles seized, to those to whom they respectively belong, even though they are reasonably suspected to have been used or intended to be used for the purpose of gaming (*Lachmi Narain Marwari v. Emperor*, 1924 A. I. R. Pat. 42.).

Table-money, money found on the floor, are generally confiscated.

The Magistrate while exercising discretion to return should decide the question of title.

This section does not expressly authorize the Magistrate to order the instruments of gaming to be returned. But where the trial results in an acquittal or the Magistrate for any other reason does not order the instruments of gaming to be destroyed, it is necessary that such instruments should be returned because they can neither be sold nor forfeited under the section.

Section 517 of the Code of Criminal Procedure has no application and orders for disposal of property seized under this Act cannot be made with reference to the provisions of that section. See section 5 (2) of the Code. Also 34 *M. L. J.* 253 ; 26 *A.* 270 ; 31 *B.* 438 ; *Khilinda Ram v. Emperor*, 23 *Cr. L. J.* 621.

U. P. Amendment.

Section 8.

NOTES.

Instruments of gaming.—See notes to S. 1, *supra*. Fighting cocks cannot be ordered to be destroyed as they are not instruments of gaming. The word 'article' in the definition of the expression 'instrument of gaming' means only inanimate moveable object. See *L. B. R.* 1872-92, page 407.

For the rest of this section, refer to notes to S. 8 of the Imperial Act, *ante*.

(Note.—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisio

of any of the U. P. Public Gambling (Amendment) Acts.

9. *It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake.*

Notes.

General.—This section means that a charge under section 3, of being the keeper or manager of a common gaming house cannot be disproved by the mere absence of evidence showing that those found playing inside the house raided under section 5 were playing for money. This is in keeping with the purport of sections 4 and 6, and this section should be read as supplementing the provisions of those sections. Under section 4, persons found *playing* with cards in a common gaming-house are guilty even though they were not playing for any money, wager or stake. In such a case, it would defeat the provisions of section 4 if the prosecution were required to prove that the play was accompanied by betting, before a person could be convicted of keeping the alleged:

common gaming house. Section 6 infers the existence of a common gaming house from the mere discovery of instruments of gaming in a suspected house raided under section 5, it being unnecessary that any persons found therein should have been seen actually playing by any member of the raiding party. Such persons are presumed to be there for gaming and consequently guilty of an offence under section 4. Even if they are seen playing, proof of playing for stakes is unnecessary for their conviction under section 4; and if the owner of the house is charged with being the keeper of the presumed common gaming house, similar evidence is unnecessary in his case too and he can be convicted on that charge without such evidence. Playing for stakes or wagers would, where necessary, be presumed in his case just as it would be presumed in the case of the other co accused charged under section 4. This is what section 9 implies. In view of the presumption created by section 6, its provisions are necessary for the sake of consistency. For, it is to be noted that there is no presumption under section 6 (nor under s. 4) against any individual as being the keeper or manager of a house used as a common gaming house. The presumption allowed by section 6 is only that the house *'is used as*

a common gaming house' and not that any *particular person keeps it as such*. Section 9 should therefore be taken as amplifying the provisions of sections 4 and 6. Nothing, however, in this section warrants a conviction of any person for keeping a common gaming house, in the absence of evidence proving *that person* to have made profit by the use of his premises for gaming purposes.

For similar provisions in other enactments, see, section 9 of the Bengal Public Gambling Act, 1867, and of the Bombay Prevention of Gambling Act, 1887; and section 44 of the Madras City Police Act, 1888.

It shall not be necessary.—This section should be read with sections 4 and 6. See notes, *supra*. In case any persons are found playing at any game in a house when it is raided in conformity with the provisions of section 5, a conviction on a charge of keeping or managing the same as a common gaming house may be had without proving that they were playing for any stakes or wagers. Mere absence of direct evidence showing the game to be accompanied by wagering does not exonerate the accused.

Keeping a common gaming-house.—This is an

offence under para 1 of section 3. See section 3, *supra*.

Being concerned in the management of any common gaming house.—This is an offence under section 3, para 3.

This section renders proof of playing for money or stakes unnecessary only for a conviction for keeping or managing a common gaming house. It is inapplicable to other offences enumerated in section 3.

Found.—That is, found in an alleged common gaming house. The word 'found' should be taken to have been used in the same sense in which it has been used in section 4. See notes to section 4, *supra*. In that section this word has been differently construed by the Lahore High Court and the Nagpur Judicial Commissioner's Court. According to the opinion of the former, the word 'found' means found on an entry effected in accordance with the provisions of section 5, while the view of the latter is that the word should be understood in its ordinary, everyday sense, so that a person found gaming in a common gaming house by a number of private individuals at any

time whatsoever is well within the section. See 22 Cr. L. J. 508.

Playing at any game.—‘Game’ means a game of chance. See section 12, *infra*. The game should be carried on with instruments of gaming

Playing for any money, wager of stake.
—See notes to section 4, *ante*.

It appears to have been assumed that a Police raid will in all probability be followed by confusion amongst the players, rendering the ascertainment of the details of a game a well nigh impossible task. But where prior to a prosecution under section 3, action in conformity with the provisions of section 5 has not been taken, then in that case, the inability to establish playing for stakes should in itself be taken to constitute a sufficient refutation of the charge of keeping a common gaming house.

U. P. Amendment

Section 9.

NOTES.

Common gaming house.—See section 1, *supra*.

No change has been introduced in the wording of this section by any of the United Provinces Acts, I of 1917, IV of 1919, or I of 1925. But the last mentioned enactment has made the term 'common gaming house' more comprehensive so as to include any premises in which *Satta* or similar wagering is carried on. See clause (1) of section 2 of that Act. The definition given in clause (2) of that section is not materially different from the definition contained in the Imperial Act. Hence for cases in which the common gaming house is alleged to be of the kind mentioned in S. 2, cl. 2 of the U. P. Act I of 1925, notes (*supra*) under section 9 of the Imperial Act (III of 1867) should be consulted. For other cases, see below.

Playing at any game.—These words are not synonymous with the 'gaming.' Gaming is always associated with staking of money on the result of a game of chance. The word 'game' means a sport or pastime of any kind, while the wor

'gaming' is applied to the practice of staking property beyond the purpose of mere sport. These are independent words. The legislature does not appear to have used the words 'playing at any game' in the sense of 'gaming,' otherwise the section would have contained the latter and not the former expression. The succeeding words 'was playing for money, wager or stake' clearly indicate the intention of the Legislature.

The provisions of this section do not appear to be applicable or intended to apply to those cases where a person is accused of for keeping a common gaming house in which *Satta* or similar form of wagering is carried on. Under section 2 (1) of the U. P. Act I of 1925, a house in which *Satta* wagering is carried on is a common gaming house. The question of profit or gain accruing to the owner or occupier of the house is immaterial; what is essential is the instruments of gaming (which includes betting or wagering; see S. 2 of the Local Act I of 1917.) should be kept or used in the house. Any article used for facilitating or as an appurtenance of 'wagering' is an instrument of gaming. See s. 2 of the Local Act I of 1917. The question that arises is whether persons found thus wagering in such a house when it is raided under

the provisions of section 5, can be said to be found 'playing at any game.' 'Gaming' has been defined in section 2 of the U. P. Act I of 1917, so as to include 'wagering'; but from this it does not follow that a 'game' include a 'wager', 'game' and 'gaming' being independent words, as seen above. 'Game' has not been defined in the Imperial Act nor in any of the Local Acts; it should therefore be understood in its ordinary sense according to which laying wagers on the price of a commodity cannot be said to be *playing a game*. See, *Emperor v. Vithal Das Hirji*, 19 Bom. L. R. 830.

See section 9 of the Bombay Act IV of 1887, in which the word 'gaming' was substituted for the words "playing at any game" by the Bombay Act VI of 1919. See Appendix.

10. *It shall be lawful for the Magistrate*
 Magistrate may re- *before whom any persons shall*
 quire any person appre- *be brought, who have been found*
 handed to be sworn and *in any house, walled enclosure,*
 give evidence. *room or place entered under the provisions of this*
Act, to require any such persons to be examined on
oath or solemn affirmation, and give evidence
touching any unlawful gaming in such house,
walled enclosure, room or place, or touching

act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code.

(Note.—For the United Provinces of Agra and Oudh, instead of the words 'house, walled enclosure, room or—

'place' in this section, substitute "house, room, tent, walled enclosure, space, vehicle, vessel or place." See section 3 of the U. P. Act I of 1917.).

NOTES

General—This section enables a court trying an offence under section 3 or section 4 of this Act to examine one or more of the accused persons as witnesses. This power, however, can be exercised only where any suspected premises have been entered strictly in accordance with the provisions of section 5. If the entry is affected otherwise, an accused person cannot be converted into a witness. A person required to give evidence under this section cannot be tendered a pardon *before his examination*. What the section permits is the transfer of an accused from the dock to the witness-box.

The power conferred by this section is exercisable by a court alone, and the prosecution has no right to produce an accused person as a witness.

A person examined under this section is, subject to his deposing truthfully, treated as an

approver and pardoned under section 11 His testimony should be received with caution as he is under an inducement to make statements favourable to the prosecution in order to secure a certificate of indemnity for himself. See section 11, *infra*.

This section does not bar the production as witnesses, of persons who though found with the accused, have not been proceeded against and brought for trial before a Magistrate. Only an *accused person on trial* cannot be thus produced as a witness.

For similar law in other Provinces, see section 17 of the Bombay Act IV of 1887 ; section 8 of the Burma Act II of 189 ; and section 48 of the Madras City Police Act, 1888.

Before whom any persons shall be brought — This section has no application to persons who have not been actually brought for trial before a Magistrate. If the prosecution chooses to proceed only against some of the persons found in a house searched under section 5, it will not prevent the officer conducting the prosecution from calling as witnesses persons not so proceeded'

-against (*Sh. Moti v Emperor*, 9 N. L. R. 68; 19 J. C. 949; 14 Cr. L. J. 293.).

Who have been found.....of this Act.—That is, who have been found in a suspected house by a Magistrate or by a police officer acting in accordance with the provisions of section 5 of this Act. One accused can be examined against the others only when a house is searched under the provisions of *this Act* and not contrary to them (*Ram Sarup v. King-Emperor*, 1 A. L. J. 115.). If a warrant issued under section 5 is illegal the examination of witnesses in accordance with this section is not justified (*Kalu Ram v. Emperor*, 19 A. L. J. 691.). Where an Assistant Superintendent of Police entered and searched a house without a warrant under section of this Act and arrested a number of persons found therein, *held* that the search was illegal and therefore the examination of any of the accused under section 10 was not permissible (*Nanhe Lal v. Emperor*, 23 A. L. J. 137.). An accused person can be converted into a witness only when the provisions of section 5 have been duly followed.

To require any such person.....affirmation.—
No pardon should be tendered before exami

tion. The section simply allows the trying Magistrate to transfer an accused person from the dock to the witness box. The Magistrate is empowered to examine even though the person to be examined be unwilling to give evidence. Refusal to give evidence is an offence as laid down in para. 3 of this section.

It is not necessary that the examination under this section should be limited to one of the accused persons on trial. It is lawful for the Magistrate to examine any or all of them (*Mahadeo v. Emperor*, 18 A. L. J. 383; 21 Cr. L. J. 737; 58 I. C. 241.).

This is an enabling section empowering the Magistrate, out of persons brought before him for trial, to convert any he may think fit into witnesses (*Sh. Moti v. Emperor*, 9 N. L. R. 68; 19 I. C. 949.). It is only on the requisition of the Magistrate before whom the accused are brought, that any of them can be examined as a witness under this section. Without such requisition examination of any of them by the prosecution would be illegal. If the prosecution chooses to proceed only against some of the persons found in a common gaming house, that will not prevent

the officer conducting the prosecution from calling as witnesses persons not proceeded against (*Sh. Moti v Emperor*, 9 N. L. R. 68; 19 I. C. 940). But he cannot call as a witness a person who has been produced before a Magistrate for trial as an accused in the case.

And give evidence.—A person examined as a witness under this section is not an 'approver' within the meaning of the Code of Criminal Procedure, and so his evidence can be accepted without corroboration (*Bhaggi Lal v. Emperor*, 18 A. L. J. 562; 21 Cr. L. J. 438; 56 I. C. 230; 42 A. 470.).

It is submitted that a person examined under section 10 stands no higher and is consequently not entitled to greater credence, than an approver under the Code of Criminal Procedure. He is believed to have been concerned in the commission of the offence under inquiry just as much as an approver under the Code. Under the Code, an accomplice is tendered a pardon and is examined as a witness; under this section too he is examined as a witness and receives a pardon as laid down in section 11. Thus both under the Code as well as under this Act, the deponent is under an obligation to make a statement favourable to the prosecu-

tion. He is also liable to be tried for the offence if he does not make a true and faithful disclosure. See section 339 of the Code of Criminal Procedure, 1898. Also see *infra*, section 11 of this Act. Thus, the testimony of a guilty associate in crime whether recorded under the provisions of the Code (see S. 337 cl. 2) or under section 10 of this Act is equally open to suspicion. Section 114, illustration (b), of the Indian Evidence Act, 1872, which lays down that an accomplice is unworthy of credit unless he is corroborated in material particulars indicates the weight to be attached to the statements made by a certain class of witnesses and is equally applicable to all proceedings whether under the Code or under this or any other Act. It provides a safeguard against injustice to the accused on trial, determining as it does the question of *credibility* of certain class of evidence and not one of mere *admissibility* thereof. The provisions of the Indian Evidence Act, 1872, apply to all judicial proceedings, and the Public Gambling Act, 1867, appears to contain nothing that can be taken to exclude the application of section 114 of the former to proceedings under the latter. The artificial presumption created by section 6 of this Act renders it still more desirable that the evidence given by an accom-

plice examined in conformity with the provisions of this section should be rejected unless it is corroborated in material particulars. See *Barkat Ali v. Crown*, 2 P. R. 1917 Cr; 36 I. C. 861.

In an Allahabad case, *Mahadeo v. Emperor*, 18 A. L. J. 383. It has been held that the evidence given by a person under section 10 must be received with caution. It is usually the evidence of an accomplice and is always evidence given by a person who is under a certain inducement to make a statement favourable to the prosecution case in order to secure a certificate of indemnity for himself. These considerations bear upon the weight to be attached to such evidence but have nothing to do with the question of its admissibility. In another subsequent Allahabad case, *Kalu Ram v. Emperor*, 19 A. L. J. 691, where one of the accused stated that money was raken from the gamblers, it was held that the statement was unacceptable for want of corroboration.

Though section 10 renders it admissible to examine persons who are accomplices to the accused, it does not invest their testimony with any special value beyond that which ordinarily attaches to the evidence of accomplices (*Queen v.*

Empress v. Nga Ya Po, U. B. R. 1897-1901, Vol. 1, 224.)

Touching any unlawful gaming.—This does not preclude him from stating the details of any lawful gaming going on in the house at the time of the raid. The evidence may or may not be favourable to the prosecution.

Authorized as aforesaid.—That is, authorized under section 5 of this Act.

Such Magistrate as aforesaid.—This refers to the words “the Magistrate.....shall be brought” in para 1 of this section.

At any subsequent time.—For instance, if the accused have been ordered to be retried by a court of appeal, the trying Magistrate is competent to examine him under this section. But he cannot so examine an accused person who had not been required to give evidence at the original trial.

By or before any Court.—*E. g.*, a court of appeal.

Or from answering any question.—*Cf.* section 132 of the Indian Evidence Act, 1872.

On the ground.....criminate himself.—This section is silent as to whether the statement of a person examined under his section can be given in evidence against him at his trial, in case the Magistrate does not believe the same to be a faithful disclosure and so does not free him from prosecution. See section 11, *infra*. Under section 339 (2) of the Code of Criminal Procedure, the statement made by a person accepting a tender of pardon may be given in evidence against him at his trial for the offence in respect of which the pardon was tendered. Section 132 of the Indian Evidence Act provides that self-criminating answers given by a witness under compulsion cannot be proved against him in any criminal proceeding.

Section 178 or section 179 of the Indian Penal Code.—Section 178 of the Indian Penal Code makes it an offence to refuse oath or affirmation when duly required by a public servant to make it. Refusing to answer a public servant authorized to question is an offence under section 179 I.P.C. Either offence is punishable with 6 month's simple imprisonment or with fine upto Rs 1000, or with both.

U. P. Amendment.

Section 10.

NOTES.

Substitute the words "house, room, tent, walled enclosure, space, vehicle, vessel, or place" for the words "house, walled enclosure, room or place" wherever they occur in this section. See section 3 of the United Provinces Public Gambling (Amendment) Act, 1917. See *Appendix*.

For commentary, refer (*supra*) to notes to section 10 of the Imperial Act.

(Note.—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any of the United Provinces amending enactments.).

11. *Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his*

knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

NOTES

General.—This section provides that an accused person examined under the provisions of section 10 shall, subject to his deposing truthfully, be freed from prosecution for any offence under this Act already committed by him. Satisfaction of the trying Magistrate as to the truth of his testimony is a condition precedent to such immunity from prosecution. The provisions of this section are mandatory and the Magistrate is bound to grant a certificate of indemnity if the requirements of the section have been fulfilled.

If the evidence of a person arrested under section 5 is to be taken, he should be examined as a witness in accordance with the provisions of section 10 and *not otherwise*, and should be absolved from punishment under this section.

This section is not limited in its application to the cases of persons examined under section

U. P. Amendment.

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(Note.—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any of the United Provinces amending enactments.).

11. *Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his*

knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

NOTES

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If the evidence of a person arrested under section 5 is to be taken, he should be examined as a witness in accordance with the provisions of section 10 and *not otherwise*, and should be absolved from punishment under this section.

This section is not limited in its application to the cases of persons examined under sec "

10. It is equally applicable to persons produced as witnesses by the prosecution, who though found taking part in unlawful gaming, have not been proceeded against.

This section too is silent as to whether the testimony of an accomplice examined under section 10 and disbelieved, is admissible in evidence against him at his trial. See section 132 of the Indian Evidence Act, 1872 ; also section 339 (2) of the Code of Criminal Procedure, 1898.

For similar law in other Provinces, see section 9 of the Burma Gambling Act, 1899; section 10 of the Bombay Prevention of Gambling Act, 1887 ; section 48 of the Madras City Police Act, 1888; and section 50 of the Calcutta Police Act, 1866.

Concerned in gaming contrary to this Act — This means a person guilty of an offence under section 3 or section 4, or of the offence of gaming in a public place under section 13. These words are more comprehensive than the words "who have been found in any house, walled enclosure, room or place entered under the provisions of this Act" used in section 10.

to San
le under
into

public place within the meaning of section 13. Section 10 contemplates a case gambling in a common gaming house *only*; the words "breach of any of the provisions of this Act relation to gaming" in this section cover a case of *public gambling* as well. See section 13, *infra*.

It is to be noted that this section does not in any way make it lawful for the prosecution to examine as a witness an accused person who is being tried under section 13 for the offence of gambling in a public place. Even the trying Magistrate is not competent to do so. He is enabled under section 10 to convert into a witness an accused, only if he was found in a house raided in conformity with the provisions of section 5. In no other case can an accused put up for trial, be examined as a witness either by the Magistrate or by the prosecution. The prosecution may call as witnesses only those persons who, though concerned in unlawful gaming (whether in a private house or in a public place) have not been sent up as accused in the case.

Co-accused as a defence witness.—An accused who is being tried in separate trials for offences under sections 3 and 4 is entitled to call

and examine a co-accused with him under section 4 as a defence witness in the section 3 case. Section 132 of the Indian Evidence Act, 1872, provides sufficient protection for the witness in such a case, and he cannot be excused from appearing as a witness (*Raja Ram v. Emperor*, 73 I. C. 521.).

Relating to gaming—That is, gaming in a public place or in an alleged common gaming house. These words exclude the offence of setting birds and animals to fight in a public place. See section 13, *infra*.

Opinion of the Magistrate.—The person examined is entitled to a certificate of indemnity only if the trying Magistrate is of opinion that he has deposed truthfully. See *Bhaggi Lal v. Emperor*, 21 Cr. L. J. 438. If the deposition is interspersed with falsehood he should not be freed from prosecution. On the other hand, if the Magistrate is of opinion that he has disclosed the whole truth, he should grant the certificate of indemnity.

Make true and faithful discovery.....
so examined.—This section allows the acquittal of an approver only if a disclosure

and believed to be true and faithful (*Ram Shanker v. King-Emperor*, 20 O. C. 4; 39 I.C. 334). The mere fact that the evidence helps the accused is no sufficient ground for holding the same to be untrue.

Section 10 simply legalises the examination of an accomplice as a witness, but it does not invest his testimony with any special value beyond that which ordinarily attaches to the evidence of accomplices (*Queen-Empress v. Nga Ya Po*, U. B. R. 1897-1901, Vol I, p. 224.).

Shall thereupon receive.....a certificate.— Pardon should not be tendered prior to examination. See 2 A. 260; 3 B. H. C. Cr. 59. The person examined is not an approver within the meaning of the Code of Criminal Procedure. See *Bhaggi Lal v. Emperor*, 21 Cr.L.J. 438; 18 A.L.J. 562.

This provision is imperative; the Magistrate has no discretion in the matter. The person examined, if his testimony is believed and acted upon by the Magistrate, should be absolved from prosecution. A formal order of acquittal recorded in a wholly separate proceeding is probably necessary for the termination of the proceedings pending against him. See 18 A. L. J. 383.

Certificate.—This section in itself throws no light on the nature of the order required for the purpose of terminating the proceedings which have already been instituted against a person examined under section 10. It may be that the Legislature intended that the case of any such person should be treated as something *sui generis* and that the proceedings against him should be brought to a close by the mere granting of the certificate under section 11. The Code of Criminal Procedure, however, would seem to require something more than this if the proceedings initiated by the investigating police officer are to be formally concluded. The probability is that the provisions of section 494 or of section 248 of the Code of Criminal Procedure should be brought into operation (*Mahadeo v. Emperor*, 18 A. L. J. 383, at page 386.).

Freed from all prosecutions under this Act.—The deponent is absolved from prosecution for an offence under this Act alone, and not from prosecution under any other enactment. See section 118 (1) (f) of the Cantonments Act, 1924, under which a person who keeps or uses, or knowingly permits to be kept or used, place as a common gaming house, or

conducting the business of any common gaming house is punishable with fine which may extend to fifty rupees.

For anything done.....such gaming.—The words “such gaming” mean “gaming contrary to this Act.” The certificate frees him from all prosecutions under Act III of 1867, for anything done before that time in respect of any gaming in which he may have been concerned contrary to the provisions of the Act (*Mahadeo v. Emperor*, 18 A. L. J. 383, at p. 383; 31 Cr. L. J. 737 at p. 738, col. 2.). In *Bhaggi Lal v. Emperor*, 18 A. L. J. 562, it was, however, held that a court, if of opinion that a person examined under section 10 had made a true statement, it might grant him a certificate freeing him from prosecution in connection with *the gaming*.

U. P. Amendment.

Section 11.

Notes.

Consult notes on section 11 of the Imperial Act, *supra*.

(Note :—'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any U. P. amending enactment.).

12. Nothing in the foregoing provisions of Act not to apply to this Act contained shall be held to apply to any game of mere skill wherever played.

NOTES.

General.—See section 13 A of this Act. For similar provisions in other enactments, see section 13 of the Bombay Act IV of 1887; section 4 of the Burma Act I of 1899; section 11 A of the Bengal Act II of 1867; section 49 of the Madras City Police Act, 1888; and section 50 A of the Calcutta Police Act, 1866.

This section and section 13 together limit the application of this Act to games of chance. Games of mere skill, whether played in a house or in a public place, are exempted from its operation. It is a good defence to a charge under sections 3, 4 or 13 of this Act that the game played was one of mere skill. The accused is entitled to an acquittal if it is proved that the game was not a game of chance but one of mere skill.

A game of 'mere skill' means a game of 'pure skill'. But it has been held that the mere presence of an element of chance in a game, does not necessarily makes it a game of chance. Where a game is one of mixed chance and skill, the question whether it is a game of chance or one of skill is to be determined with reference to the main element in it. If the element of chance is subordinate to the element of skill, the game should be treated as one of skill and, therefore, one to which the Act does not apply. If, on the other hand, the element of chance predominates, it is a game of chance and comes within the Act. It is for the accused to show, in order to bring the case under the exemption provided by this section, that the game played was a game of mere skill.

This section does not apply to the United Provinces of Agra and Oudh, having been repealed there by section 4 of the Local Act I of 1917. A similar provision has, however been embodied in the new section 13-A which applies exclusively to these Provinces.

11

Foregoing provisions.—That is, sections 1 to 11 inclusive (the marginal note does not indicate the true scope of the section). Games of

skill have been excluded from the operation of these sections. A house in which games of skill are played is not a common gaming house, and any persons found therein, taking part or present for the purpose of taking part in such games are not guilty of an offence under this Act. It is immaterial whether the owner or occupier of the house does or does not levy a charge for the use of the house. Similarly persons found playing at such games in a public place cannot be convicted under section 13 of this Act. See section 13, *post*.

Any game of mere skill.—If a game is one of pure chance, it is subject to the prohibitions contained in this Act. If the game is one of pure skill, or where the chief element of a game is one of skill, the game is excluded from the operation of this Act. See *Har Singh v. Emperor*, 6 C. L. J. 708; 6 Cr. L. J. 421; also *Ahmad Khan v. Emperor*, 8 A. L. J. 1262. A game of skill means a game in which there are two parties pitting their skill against each other. So that a ring game kept for the profit of one who does not play himself and does not at all pit his skill against any person cannot be a game of skill (*Ram Newaz Lal v. Emperor*, 23 I. C. 484.). It is essential for an

offence of gambling under the Act, that the game should be one in which the loss might be due not to a lack of skill but lack of luck. See *Tillock Chand v. Emperor (Bombay)*, 26 Cr. L. J. 1356; 89 I. C. 396.

'Mere skill' means pure skill. The mere presence of an element of chance in a game does not make it a game of chance. Where a game requires a certain amount of skill and there is also a certain amount of chance in it, the question whether it is a game of chance or of skill is to be determined with reference to the preponderating element in it. If the predominating element is of chance, then the game is one of chance and would come under the Act. If the element of chance is subordinate to the element of skill, the game is one of skill and is outside the purview of the Act (*Hari Singh v. King-Emperor*, 6 C L. J. 708; *Damri Mian v. Emperor*, 23 Cr. L. J. 390; 61 I. C. 518; *Ahmad Khan v. King-Emperor*, 8 A. L. J. 1262).

The game of 'chess' is one of pure skill; 'whist' and 'billiards' are also classed with games of skill.

Dominoes or Thouboupe as played in Burma, is a game of skill, because the element of chance

in it is subordinate to the element of skill. See *Emperor v. Tun Zun*, 8 I. C. 451.

Ring game.—A game played by throwing a ring over a pin is a game of chance and not one of mere skill, and is therefore not exempt under this Act (*Ahmad Khan v. King-Emperor*, 8 A. L. J. 1262.). In Calcutta, different views have in different cases been expressed in regard to this game. In *Ram Newaz Lal v. Emperor*, 23 I. C. 484; 15 Cr. L. J. 276, the game was held not to be one of mere skill, because a game of skill implies that there are two parties pitting their skill against each other, which could not be said to be the case where the person for whose profit the ring-game was kept did not pit his skill against any person throwing rings. Contra, see *Hari Singh v. Emperor*, 6 C. L. J. 708; 6 Cr. L. J. 421 which was dissented from in the last case. Also see *Bengali Shah v. Emperor*, 14 Cr. L. J. 452; 27 C. W. N. 883; 40 C 702. The Patna High Court has, however, held that all these conflicting decisions are reconcilable in the view that the question whether the game is one of chance or of skill is a question of fact to be determined with reference to the details of the game in each particular case. The construction of the table, the

position thereof, the circumference of the rings and various other things have to be considered to see whether the game is one of skill or not. In this case the finding of the lower courts that the game was one of chance was left undisturbed as the Magistrate was not shown to have committed any grave error in arriving thereat (*Damr: Mian v. Emperor*, 22 Cr. L. J. 390; 61 I. C. 518.).

The game of 'Gonnyin' is one of skill (*Mg. Paw Kyaw Zan v. King-Emperor*, 1924 A. I. R. Rang. 378(1).). See also, *U. B. R.* 1897-1901 Vol. I, 209.

The Burmese game of 'Ket' is a game of chance and not one of mere human skill (*Po On v. King-Emperor*, 41 I. C. 132; 18 Cr L. J. 756.).

The game of 'Ma chauk' or sparrow also known as 'Chauk-ba' is a game of mere skill (*Ah Shein v. King-Emperor*, 1923 A. I. R. Rang. 214.).

In 'Chausar' the element of skill is subordinate to the element of chance.

Nature of game.—Whether a game is one of chance or of pure skill is a question of fact and

has in each case to be decided with reference to the details of the particular game. It is a question of the application of the Act involving risk to lawful recreations of the public, and its determination by the Magistrate should be taken as a finding open to interference by the High Court. See *Ahmad Khan v. King-Emperor*, 8 A. L. J. 1262; 12 I. C. 988. The Patna High Court has held that unless it is shown that the Magistrate committed any grave error in arriving at the finding on the point, the High Court will not interfere (*Damr: Mian v. Emperor*, 22 Cr. L. J. 390; 61 I. C. 518).

Wherever played.—Playing games of skill in a public place is not prohibited. See section 13, *post*. The exemption provided by section 12 applies only to games of skill played in houses or other similar private places.

U. P. Amendment.

Section 12.

NOTES

This section does not apply to the United Provinces of Agra and Oudh. It has been repealed there by section 4 of the U. P. Public Gambling,

(Amendment) Act, 1917. A similar provision is however, embodied in section 13-A which applies to these Provinces only and which was inserted by section 5 of the Local Act.

13. A Police-officer may apprehend without

Gaming and setting warrant—

birds and animals to
fight in public streets

any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

And such Police officer

Destruction of instruments of gaming found in public streets
public place
 of these

arrest, and the Magistrate
 the offender, order such
 with destroyed.

(Note.—For U P see under
 end of notes to this section)

NOTE

General—This section
 ling, as also setting birds
public place. Sections 3
 committed in places which

Three classes of persons
 this section :—

1. Persons found ;
 in a public place ,

ts,

7 ;

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on

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e

2. Persons setting
 in a public place ;

3. Persons abetting
 or animals, on the spot

Offences under this section are cognizable. Games of mere skill are beyond the purview of this section. The arresting officer may seize all instruments of gaming found on the spot or on the accused. In case of conviction, the trying Magistrate can order destruction of the instruments of gaming so seized. Unlawful gaming in a house has been deemed by the Legislature to be a more serious offence than gambling in a public street. And so it is, that a person convicted under this section is dealt with much more leniently than a person guilty of an offence under section 3 or section 4. See sections 3 and 4, *supra*. Repeated commission of an offence under section 3 or section 4 renders the offender liable to enhanced punishment in accordance with the provisions of section 15; but no such liability is incurred by a person convicted more than once of the offence of gaming under this section. An order for forfeiture of money cannot follow a conviction under this section. Forfeiture permissible under section 8 is confined to cases in which a person is convicted of an offence under section 4 or of keeping a common gaming house. Similarly persons found in a common gaming house alone are subjected to the penalty

provided by section 7 for concealing true names and addresses.

In section 3 the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection, known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. Under section 13, however, the offence is not that individual members are making a profit at all, but simply that they are carrying on gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed, if his inclination lie that way, to join in or follow the bad example openly placed in his way. In one case the comparative privacy for profit, in the other bad public example and accessibility to the public, would seem to constitute the gravamen of the offence. See, *Emperor, v. Jusbally*, 29 B. 386.

For similar provisions in other enactments, see, section 12 of the Bombay Act IV of 1887; sections 5 and 10 of the Burma Act, I of 1899; section 11 of the Bengal Act II of 1867; section 3 (10) of the Towns Nuisances Act (Madras), 1889; section 72 of the Madras City Police

Act, 1888 ; and section 118 (1) (a) *vii* of the Cantonments Act, 1924.

Police-Officer.—A police officer alone is authorized to arrest without warrant an offender under this section. Every police officer, irrespective of rank, is competent to take action under this section.

May apprehend without warrant.—This is discretionary. It would be a bad exercise of discretion to make arrests on the occasion of the Diwali or other religious festival when gambling is considered by the Hindus as a part performance of a religious duty.

Found playing for money.—It is essential that the accused should be found actually playing for valuable stakes with instruments of gaming. Unless the facts show that persons accused of an offence under section 13, were, in the words of the section, found playing for money or other valuable thing with some instrument of gaming used in playing any game not being a game of mere skill, such persons cannot lawfully be convicted under that section. Every element necessary to constitute the offence must be present before the section can be enforced against an alleged offen-

der (*Gajju v. Emperor*, 14 N. L. R. 137 ; 47 I. C. 433.). It is illegal for a police officer to arrest without warrant persons he finds playing, unless they are playing for money or other valuable thing (*Queen Empress v. Govind*, 16 B. 283, F. B.). Persons found not so playing cannot be punished even as abettors. Section 18 of this Act having been repealed by Act XVI of 1871, section 1, the provisions of the Indian Penal Code relating to abetment do not apply to offences under this Act

other instruments of gaming.—See notes under section 1, *supra*. The instrument of gaming should be *ejusdem generis* with cards, dice or counters (*Gajju v. Emperor*, 14 N. L. R. 137 ; 47 I. C. 433.). A lottery or sweep ticket is not such an instrument. See, 14 N. L. R. 137. Nor a fighting cock or other bird or animal.

Used in playing any game.—The instruments of gaming should be used in playing a game of chance. Mere betting without gaming is no offence under this section. Recording bets or laying bets about an uncertain event is not playing a game in any reasonable sense of that expression. Except where the well-established difference between betting and gaming has been bridged over by

special enactments including betting within the term 'gaming', the courts have always refused to punish *betting* as an instance of *gaming*. So far as Act III of 1867 is concerned, the event on which the bet is made must be a game played by those who bet, before it can be called gaming (*Gajju v. Emperor*, 14 N. L. R. 137; 47 I. C. 433.)

'Instruments of gaming used in playing any game' means implements devised or intended for that purpose (*Queen-Empress v Govind*, 16 B. 283 F. B.). Betting on a horse-race accompanied by recording bets on slips of paper is not playing a game or at any rate playing a game with *instrument of gaming used in playing a game* (*Emperor v. Vithaldas Hirjee*, 19 Bom. L. R. 830; 42 I. C. 920; 19 Cr. L. J. 8.). Holding a bullock race and betting thereon is not an offence under this section (*Queen-Empress v. Nga Shwe Ton*, L. B. R. 1872-92, 541.). Tossing for pice on a public road was held to be no offence in 6 B. 19. A coin is not an instrument of gaming. See, 16 B. 283.

Not being a game of mere skill.—These words exempt a game of mere skill from the operation of this section. This section prohibits a game of chance only; and that too, when it is

played for money. The words "foregoing provisions" in section 12 necessitate the use of these words in order to provide an exception in favour of games of skill. For 'game of mere skill' see notes to section 12, *ante*.

Public street, place or thoroughfare.—It is essential for a conviction for an offence under this section that it should have been committed in a public street, place or thoroughfare. If the place where gambling was carried on is not a public place, this section does not apply (*Queen-Empress v Anant*, S. C. 63, *Oudh*). The gist of the offence is publicity given to gaming, so that it cannot escape the notice of passers-by and may induce them to discard their lawful pursuit and join the game. Much mischief might be worked by the temptation thus placed in their way.

PUBLIC PLACE.

The word 'place' in this section is qualified by the word 'public', and having regard to its context and its position in that context, it must mean a place of the same general character as a street or thoroughfare, else it was pointless to use the words "street or thoroughfare" as they are used. See, *Emperor v. Hussain Noor Mo-*

hammad, 30 B. 348, 3 Cr. L. J. 216. 'Public place' in this section must be interpreted in connection with the expressions 'public street' and 'public thoroughfare' with which it is joined (*Vithu v. Emperor*, 9 N. L. R. 164; 21 I. C. 910.) See also *Khudi Sheikh v King-Emperor*, 6 C. W. N 33. The word 'place' is to be read as *ajudem generis* with the words 'street or thoroughfare' which precede it (*Nga Hlwe v. Emperor*, 54 I. C. 50, 21 Cr. L. J. 2). The term 'public place' is not defined in the Gambling Act. It may well have different meanings for the purposes of different Acts. Where it is not specifically defined, its value must be reasonably determined by the context and the circumstances in which it has been used (*Tu'si Das v King Emperor*, 5 L. R. (ALL), 140 Cr. 22 A. L. J. 741; 1924 A. I. R. All 768, 82 I. C. 476, 46 A. 787, 25 Cr. L. J. 1309) A 'public place' must be a place of the same nature as a street or thoroughfare (*Lu Gale v Emperor*, 12 Cr. L. J. 245, 4 Bur. L. T. 71, 10 I. C. 775).

Thus, one of the essentials of a 'place' under this section is that it must be a place akin to a public street or thoroughfare.

Another requisite is that the place must be one frequented by the public. As regards this a question arises whether the place should be resorted to by the public as a matter of right or merely as a matter of fact. Where the title to a place is vested in the public so that the public or a considerable portion of them have access thereto as a matter of right, there can be no doubt that the place is a 'public place.' But where a place resorted to by the public is privately owned, a question arises whether it can be called a 'public place' irrespective of the right of the public to use it. In other words, can the private property of an individual, which is used by the public *without any right* constitute a 'public place' within the meaning of this section? The decisions on the point not being all easily reconcilable, it would be more convenient and useful to notice the view of each High Court separately.

Allahabad view.—According to the view of the High Court of Allahabad, 'public place' means a place to which the public are in the habit of going, even without having any right to do so. A place to which the public have by right or by permission or by usage or otherwise

access is a 'public place' (*Queen-Empress v. Srī Lal*, 17 A. 166). In *Sukhnandan Singh v. Emperor*, 20 A. L. J. 80; 44 A. 265; 65 I. C. 419, it was held that where the public have access to a place, without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not. In this case the place in question was a grove—which was private property,—with a shrine and a tank at one end. At the time the accused were found gambling in the grove, a fair was in progress and visitors to the fair had penetrated to all parts of the grove and there was no interference with their doing so. In both these cases, the view expressed in the English case of *Queen v. Welland* (1884), 14 Q. B. D. 63 was followed.

The words 'public place' are capable equally of including 'a place the title to which is vested in the public' and 'a place to which, however owned, the public is allowed in effect unrestricted access'. In determining whether a place is a 'public place', it is not the question of title to the place nor the nature of its metes and bounds which are the decisive factors but the *use to which the place is put* (*Tulsi Das v. King-Emperor*, All. 5 L. R. 149 Cr.; 22 A. L. J. 741; 1922

A. I. R. All. 768; 82 *I. C.* 476; 25 *Cr. L. J.* 1308.).

Calcutta and Madras View.—The high Courts of Calcutta and Madras have also come to the same conclusion as the High Court of Allahabad. A public place is one where the public go whether they have a right to do so or not. A legal right of access is not essential to constitute a place a 'public place' (*Crown v. Govindarajulu*, 39 *M.* 886; 30 *I. C.* 752; *Public Prosecutor v. Mt. Sakharam*, 40 *M.* 556; 36 *I. C.* 839.).

A place may be a public place, though it be the private property of an individual. Where a place is in any way dedicated to the use of the public, it is of course a 'public place'. But when it is owned privately, and such dedication has not taken place, the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it (*Hari Singh v. Jadunandan Singh*, 31 *C.* 642; 8 *C. W. N.* 458.). Also see, 39 *C.* 968; and 6 *C. L. J.* 708..

Oudh View.—A 'public place' within the meaning of section 13 must be a place which is either open to the public or is used by the public, and:

the publicity of its situation any more than public ownership is not essential (*King-Emperor v. Bashir*, 26 O. C. 41; 1922 A. I. R. Oudh, 275; 68 I. C. 613.). A place to which persons are in the habit of going, even without having any strict legal right to do so, is a public place (*Queen-Empress v. Mahabir*, S. C. 91, Oudh.). A foot path running through a private grove and used by the public as of right is a public place (*King-Emperor v. Lalaji*, 68 I. C. 611; 25 O. C. 114.).

Nagpur View.—A place may be a public place though it is the private property of an individual. The question whether a place privately owned and not in any way dedicated to the use of the public is a 'public place' depends on the character of the place itself and the use actually made of it (*Vithu v. Emperor*, 9 N. L. R. 164; 21 I. C. 910; 14 Cr. L. J. 670.). The following cases however would seem to indicate a modification of this view.

For the purposes of section 13, the term 'public place' signifies a place to which the public resort as a matter of fact whether of right or with the permission of a private owner (*Gajju v. Emperor*, 14 N. L. R. 137; 47 I. C. 433; 19 Cr. L. J. 917.).

A place to be public, must be open to the public, i. e., a place to which the public have *lawful* access by right, permission, usage or otherwise. The proximity of a 'private place' to a public thoroughfare is not always a safe test of its public nature. Where its owner has not relinquished his exclusive right in favour of the public so as to dedicate the same to the use of the public at large and the place is still private, it cannot be styled 'public place' *even though it is used by certain individuals* (*Sabimaya v. Emperor*, 81 I. C. 897).

Punjab view.—The Punjab High Court has in a series of cases held that for the purposes of this section, a 'public place' means a place which is frequented by the public as a matter of *right*. The determining factor is the right of the public to have access to the place in question. If the public have no right to resort to a place, it cannot be said to be a *public place* for the purposes of section 13.

In *Kashi Ram v. Empress*, 17 P. R 1882 Cr., 'public place' was held to mean a place appropriated to the use of the public. Similarly in *King Emperor v. Fayja*, 9 P. R 1905 Cr; 2 Cr. L. J. 46, a conviction under this section was set aside on the

that the land in question had not been dedicated to the public. The same opinion was expressed in the case of *Mul Singh v. Empress*, 11 P. R. 1890 Cr. In *Moula v. Emperor*, 21 Cr. L. J. 512; 56 I. C. 672; 104 P. L. R. 1920, a place near a public street and exposed to public view, but which was not a part of the public street, was held not to be a public place, and a conviction under section 13 for gambling there was quashed. In another case *Badraddin v. Emperor*, 21 Cr. L. J. 691; 57 I. C. 931., the outskirts of a railway station, that is, those parts to which the public have no right of access, were held not to be a public place, and a conviction under this section for gambling near a water tank of a railway station was set aside. The cases of *Mul Singh v. Empress*, 11 P. R. 1890 Cr., *Kashi Ram v. Empress*, 17 P. R. 1882 Cr., and *King-Emperor, v. Fajja*, 9 P. R. 1905 Cr were followed. See also *East Indian Railway Co. v. Lala Moti Sagar*, 9 I. C. 1011; 36 P. R. 1911 Cr.

The bank of a government canal to which the public may or may not have access according to the existing orders was held not to be a public place, because it was not frequented by the public nor was it a place dedicated to the use of the

public (*Matwala Ram v. Crown*, 3 L. L. J. 53.). The decisions contained in 17 P. R. 1893 Cr. and 29 C. 606 were referred to in this case.

But see *Nura v. Emperor*, 84 I. C. 975; 26 Cr. L. J. 1453 in which a 'serai' resorted to by the public as a matter of fact, whether they had a right to go there or not was held to be a public place.

Bombay view.—This appears to accord with the earlier opinion of the Lahore High Court. See, *Emperor v. Hussain Noor Mahommed*, 30 B. 348., in which it was held that to call a railway line at a spot where the public would have no right to be without the permission of the Railway Company, as coming within the words 'public street, place or thoroughfare' would be to place a wrong interpretation on those words. See also, *Emperor v. Jusubally* 20 B. 386, and *Emperor v. Chenappa*, 19 I. C. 167. The law in force in Bombay now is different, section 12 of the Bombay prevention of Gambling Act, 1887, having been amended by the Bombay Act I of 1910. See Appendix.

Note.—It is to be noted that the word 'place' in this section is not synonymous with the word

'place' as used in the definition of 'common gaming house' in section 1. See notes under 'place' in section 1, *ante*. In section 1 it must be a place similar to a house, walled enclosure or room; in section 13 it means a place of the same general character as a public street or thoroughfare. So that whatever constitutes a 'place' within the meaning of section 1, cannot be said to be covered by the term as used in section 13. The Legislature seems to have intended to differentiate clearly between a 'place' which can be kept or used as a common gaming house, and a 'place' where gambling would amount to the offence of 'gaming in a public place' within the meaning of section 13. A house, for instance, cannot be a public place within the meaning of section 13, and gambling therein cannot be styled as gambling in a public place. A different construction would make it impossible to distinguish between common gaming houses open to the public at large, and a public place where gambling is carried on as contemplated by section 13. Persons found in such common gaming houses would be open to prosecution under either section—S. 4 or S. 13,—indiscriminately, and it would be extremely difficult to ascertain whether

a particular case falls exclusively within one section or the other,—a result which could never have been in the mind of the Legislature.

Tulsi Das v. Emperor, All 5 L. R. 149 Cr ; 22 A. L. J. 741.—The judgment in this case, however, appears to bear out the interpretation that every place to which the public have free access constitutes a 'public place' for the purposes of this section. In this case the accused were found gaming in the *Satta* form inside a place consisting of an enclosure within a larger enclosure along one side of which ran a public street. The premises were held on lease by some of the accused who invited all who might wish to come and bet there. The place was held to be a 'public place' and the accused were convicted under section 13 for gambling in a public place. It was also held that the place in question if used in the ordinary way as a place of residence, would undoubtedly be a private place, but the accused by their own action (in inviting the public to come and gamble there) had converted it into a public place. "The Legislature has used 'in a public place' capable equally of including in their ordinary, reasonable and proper meaning 'a place the title to which is vested

in the public', and 'a place to which however owned, the public is allowed in effect unrestricted access'. The public injury to moral standards to be prevented is equally obvious in the two cases, and the language used reasonably covers the two cases. It would be unreasonable to hold that both cases are not covered." "Whether the circumstance of the gaming in a house, which is private in every sense of the term, being visible to the public or members thereof will suffice to constitute it gaming 'in a public place' is a point which I have not got to decide in this case. I content myself with noting that in view of the case of *Thallaman*, 53 L. J. M. C. 58, 1863, anybody who so acts will at least run a risk of meeting with an adverse decision." Thus according to this decision, a place which would otherwise be *private*, becomes *public* if the person in charge thereof permits the public at large to enter there merely for gaming purposes, or even if the gaming carried on therein is visible to the public. The character of the place is immaterial. "It is not the question of title to the place nor the nature of its metes and bounds, which are the decisive factors, but the use to which the place is put."

It may also be noted that a place which is *private* does not become public by the mere fact that a few members of the public have gathered there with the sole object of gambling and are gambling there. The object of the section being the prevention of public injury to moral standards, it is essential that a place must already be a place of public resort *before* gambling there can constitute the offence of 'gaming in a public place.' Ample authority for this proposition would be found in the case of *Sukhnandan Singh v. Emperor*, 20 A. L. J. 80. Also see *Ahmad Ali v. King Emperor*, 1 A. L. J. 129.

The following have been held to be *public places*:—

1. 'Jamal Khana' of the Boras (*Emperor v. Walia Musaji*, 29 B. 226.).
2. 'Chabutra' of a temple to which all classes of the public except the lowest classes have access (*Queen-Empress v. Chote Lall*, 1895 A. IV. N. 127.).
3. A 'field' from which the crops have been reaped (*Queen-Empress v. Nga Hmat Gyi*, L. B. R. 1872-92, 317.).
4. 'Compound of a Hindu temple', though every member of the public is not allowed to

enter its precincts (*Public Prosecutor v. Must. Sakha Ram*, 36 I. C. 839; 40 M. 556.).

5. 'Private grove' used by the visitors to a fair without being interfered with, is a public place on the occasion of such fair (*Sukhnandan Singh v. Emperor*, 20 A. L. J. 80.).

6. A 'foot-path' running from the public way through a private grove, if used by the public as of right (*King-Emperor, v. Lalaji*, 25 O. C. 114; 68 I. C. 611; 23 Cr. L. J. 579.).

7. An 'open space of ground' near a bazar and not separated from it by a wall or fence, although it is private property (*Hari Singh v. Jadunadan*, 31 C. 542.).

8. A 'Zayat' in the compound of a monastery must be regarded as a place to which the public have access, and those found gaming there are guilty (*Queen-Empress v. Nga San Ye*, U. B. R. 1897-1901. Vol I, 215.).

9. A 'threshing floor' is a public, because it is one to which the public have access (*Nga Po Tun v. King-Emperor*, U. B. R. 1897-1901 Vol. I, 217.).

10. Premises taken on lease by the accused, which consisted of an enclosure within a larger

enclosure along one side of which ran a public street, and wherein the public were invited to come for betting, were held to constitute a 'public place' (*Tulsi Das v. King-Emperor*, 1924 A.I.R. All. 768; All. 5 L. R. 149 Cr; 22 A. L. J. 741.).

11. A 'Serai' hired by the Municipality as a carriage stand and frequented by the public though not as a matter of right (*Noora v. Emperor*, 25 Cr. L. J. 1453; 84 I. C. 975.).

PLACES NOT 'PUBLIC'.

1. A *private place adjoining a public street* and exposed to public view, but forming no part of the street (*Moula v. Emperor* 56 I. C. 672; 21 Cr. L. J. 512; 104 P. L. R. 1910).

2. The *outskirts of a Railway Station* where the public have no right to go (*Badrudin v. Emperor*, 21 Cr. L. J. 691; 57 I. C. 931 [Lah.]).

3. A 'boat' out at sea (*Emperor v. Jusubal-l*, 29 B. 386.).

4. A 'Chabutra' to which the public are not allowed access, though adjoining a public road. (*Queen-Empress v. Sri Lal*, 17 A. 166.).

5. A place within a 'Thakurbari' surrounded by a compound wall (*Khudi Sheikh v. King-Emperor*, 6 C. W. N. 33.).

6. A fenced garden privately owned is not a public place as it cannot be held to be akin to or of the same nature as a street or thoroughfare (*Lu Gale v. Emperor*, 4 Bur. L. 1. 71; 12 Cr. L. J. 245; 10 I. C. 775.).

7. A 'Verandah' attached to the room of a private house, looking on an alley (*Empress v. Bhagwan*, 1881 A. W. N. 17.).

8. 'Verandah' of a private house facing a public street, place or throughfare (*P. v. Dhondia Colm Dig. Cr.*, 1 of 1871.). See also 1 *Weir* 915.

9. A 'private place' near a public road and exposed to public view is not a public place. A 'public' place means a place appropriated to the use of the public (*Kashi Ram v. Empress*, 17 P. B. 1882 Cr.).

10. A 'Tharra' (platform) part of a private house by the side of but outside, a public street (*Mulsingh v. Empress*, 11 P. B. 1890 Cr.).

11. The 'Pyal' (verandah) of a private house (3 M. L. 1. 137; 7 Cr. L. J. 130.).

12. An open piece of private land outside a town and far away from the road, and not dedicated to the public (*King-Emperor v. Fajja*, 3 P. R. 1905 Cr; 2 Cr. L. J. 46; 123 P. L. R. 1905.).

13. The 'Chabutra' of the shop of an accused person, which is part of his own premises (*Empress v. Ratan*, 1881 A. W. N. 8.). Also see, *Empress v. Kalander Khan*, 1887 A. W. N. 75.).

14. A Hindu Temple although the temple is situated in a thoroughfare and can be looked at from the road (*Gaddu v. Empress*, 13 P. R. 1882 Cr.). But see, *Tulsi Das v. Empress*, 22 A. L. J. 741.

15. A cultivated field (*U. B. R.* 1892-96, Vol. I. 117.).

16. A licensed toddy-shop (*Ah Kon v. King-Emperor*, 2 L. B. R. 195.).

17. A Railway carriage forming part of a through Special train (*Emperor v. Hussein Noor Mahommed*, 30 B. 348; 3 Cr. L. J. 216.).

18. An 'Osara' enclosed on all side, with doors opening to wards the road, and

part of private property of an individual (*Durga Prasad Kalwar v. Emperor*, 31 C. 910.).

19. Gambling in a 'Verandah' privately owned is no offence although the same may be accessible to the public in the sense that there is no physical obstruction to a person desirous of stepping on to it (*Emperor v. Raghoonandan Singh*, 31 C. 912.).

20. A private grove to which the public have no access (*Ahmad Ali v. King-Emperor*, 1 A. L. J. 129.).

21. Gambling in a Zemindar's grove near a village, the gambling taking place off the foot-path running through the grove and commonly used by the tacit permission of the Zemindar as a public way, is not gambling in a 'public place' (*Emperor v. Ajudhia Prasad*, 1904 A. W. N. 92.). See also, 9 P. R. 1905 Cr.).

22. The compound of a private house (*Empress v. Kalandar Khan*, 1887 A. W. N. 75.). But see, *Tulsi Das v. King-Emperor*, 22 A. L. J. 741; All. 5 L. R. 149 Cr.

23. A blind alley which is at a long distance from highway and to get to which one has

to pass through a circuitous lane (*Mahommed Ali v. Emperor*, 68 I. C. 849; 23 Cr. L. J. 624 (Lahore)).

24. A *field shed* which the owner had left after completion of field work and which was not in the occupation of any body when the accused went there for gambling, but which had not been abandoned to the use of the public (*Nga Hlwa v. Emperor*, 21 Cr. L. J. 2; 54 I. C. 50; 12 Bur. L. T. 164).

25. A '*Math*' enclosed in a compound wall and off the highway, under management of a '*Swami*' who, if he liked, could keep out the people to whom it was usually open, could not be said to be a public place (*Emperor v. Chennappa*, 15 Bom. L. R. 101; 19 I. C. 167; 14 Cr. L. J. 167.)

Within the limits aforesaid.—The words '*limits aforesaid*' refer to the whole of the territories administered by a Lieutenant-Governor. Thus gambling on a '*Kachcha*' public road beyond the boundaries of a Municipality to which provisions of this Act had been extended, was held to be an offence under this section. See *Radhe v. Emperor*, 9 I. C. 630; 12 Cr. L. J. 107.

It is to be noted that a notification under section 2 is not necessary for the enforcement of section 13 or section 17. These sections apply to all the places mentioned in the Preamble irrespective of any such notification. See *supra*, section 2, Para (1).

Setting any birds or animals to fight.—This, if carried on in a private house is no offence under this Act, even though it be accompanied by betting. See, 50 *I. C.* 665 and 671; 20 *Cr. L. J.* 330 and 335 (*Bur.*). For this offence, wagering on the result of the fight is not essential. See, *Crown v. Nga Yeik*, 1 *L. B. R.* 231; also, 22 *C.* 788.

Public street, place or thoroughfare.—See notes above.

Within the limits aforesaid.—See notes under the same heading, *supra*.

Any person there present.—He must be present at the time of arrest. One who is not present on the spot cannot be held guilty of abetment.

Aiding and abetting.—These words do not include persons who are present against their will or accidentally or for a legitimate purpose (*Queen-Empress v. Nga Shwe Kya*, *U. B. R.* 1892 (6, Vol I, 119)). Sympathetic spectators at a cock-

fight, encouraging the same by their presence, shouting and gesticulations can rightly be convicted of being present, aiding and abetting (*U. B. R.* 1892-96, *Vol. I*, 119.). Mere spectators cannot be said to be aiding and abetting such fight. See, *L. B. R.* 1872-92, 163. Spectators (nor abettors) of gaming in a public place are not liable. Section 72 of the Madras City Police Act, 1888, makes it an offence to be present as a mere spectator at a cockfight or gaming in a public street.

When apprehended.—The exact significance of these words is not clear. Worded as this paragraph stands, it appears doubtful whether an alleged offender not apprehended on the spot can be subsequently arrested and punished, and whether these words do not oust the jurisdiction of a Magistrate to issue process on a police report. This section lays down the procedure to be followed and this coupled with the fact that the Legislature has taken a comparatively lenient view of an offence under this section (see notes under the heading 'General', *supra*) may seem to contraindicate such a course.

Shall be brought without delay.—These words override the provisions of section 61 of the Code.

of Criminal Procedure which permits a Police officer to detain in custody a person arrested without warrant, for a period of twenty-four hours prior to forwarding him to a Magistrate.

Shall be liable to a fine.—Under this section it is illegal to impose a sentence 'of both fine and imprisonment (*Empress v. Gokal*, 25 P. R. 1880 Cr.).

Where contrary to the usual rule, the punishment of fine precedes the alternative of imprisonment, primarily fine should be used as the mode of punishment, and not imprisonment which should be inflicted only in aggravated cases (*Sh. Moti. v. Emperor*, 9 N. L. R. 68; 19 I. C. 949; 14 Cr. L. J. 293.).

The sentence passed should not be unduly severe. A sentence of 15 days' imprisonment for playing cards for insignificant stakes was held to be improper and was changed into one of small fine (*Emperor v. Mahomed*, 31 I. C. 305.)

An offence under this section has been considered to be not so grave as an offence under section 3 or section 4. The maximum punishment for an offence under section 13 is a fine of Rs. 50 or one month's imprisonment;

while that provided by section 3 is a fine of Rs. 200 or 3 months' imprisonment, and by section 4, a fine of Rs. 100 or one month's imprisonment. Enhanced punishment can be awarded on a subsequent conviction under section 3 or section 4 only; see section 15, *infra*. Section 15 does not apply to offences under section 13.

May seize all instruments of gaming — Only the instruments of gaming may be seized by the arresting officer. Birds set to fight are not instruments of gaming and cannot be seized (*King-Emperor v Po Kywe*, 50 I. C. 671, *King-Emperor v. Maung Ke*, 50 I O 666; 20 Cr. L. J. 330). Nor is any money whether found on the spot or in possession of the accused liable to seizure.

Instruments of gaming destroyed — It is only when the accused are convicted that the trying Magistrate can order the instruments of gaming to be destroyed. Such an order made on acquittal is illegal. Fighting birds or animals cannot be ordered to be destroyed, as they are not instruments of gaming. See *Note* above.

An order for the destruction of instruments of gaming passed under this section should be

distinguished from a similar order under section 8.

Forfeiture.—There is nothing in section 13 authorising a Magistrate to order the confiscation of money gained by an accused person in gambling (*Mathurwa v. Emperor*, 16 A. L. J. 428; 45 I.C. 156; 19 Cr. L.J. 700.). The Magistrate is not competent to order the forfeiture of money found in possession of the accused (*King-Emperor v. Tota*, 26 A. 270; *Queen-Empress v. Anant*, S. C. 63, Oudh; *King Emperor v. Bishamber Dayal*, 24 O.C. 264.); or on the spot (*Sant v Empress*, 18 P. R. 1891 Cr.). See, *Mahadeva v. Emperor*, 7 A. L. J. 404.

Reward.—Section 16 has no application to an offence under this section. No portion of fine imposed under section 13 can be ordered to be paid to an informer (*Queen-Empress v. Nga Tha Zan*, L. B. R. 1872-92, 407); nor to a police officer by way of reward for his efforts in the case (*Crown v Ram Surn*, 2 P. R. 1870 Or.). Also see, *Sant v. Empress*, 18 P. R. 1891 Cr.

Summary trial.—An offence under section 13 is summarily triable. See section 260, Code of Criminal Procedure, 1898.

S. 562, Cr. Pro. Code.—A person convicted of an offence under section 13 may be released on probation of good conduct in accordance with the provisions of section 562 of the Code of Criminal Procedure. The contrary view laid down in *King-Emperor v. Shankar Dayal*, (1922) 71 I. C 62; 1922 A. I. R. Oudh, 224, is no longer good law. Section 562 has been recast during the recent amendment of the Code, and now its application is not restricted to offences under the Indian Penal Code. See section 562 (1) of the Code as amended by Act XVIII of 1923; also section 4 (o) of the Code. But a second or third class Magistrate is not competent to proceed under section 562; he should submit the record with a note of his opinion to a Magistrate of the first class or sub-divisional Magistrate who may pass any order which he might have passed if he had originally heard the case or he may take or remand the case for taking, any further evidence he might deem necessary. See section 380 of the Code.

Enhanced punishment—Section 15 of this Act does not apply to an offence under section 13. Hence a person once convicted of an offence under this section is not liable to enhanced punishment on a subsequent conviction for the same offence.

Procedure.—The procedure for the trial of a summons case should be followed. See sections 241-250 of the Code of Criminal Procedure.

A co-accused cannot be converted into a witness. Section 10 does not apply to offences under section 13. But an offender *not sent up for trial* may be examined as a witness by the prosecution and may be pardoned in conformity with the provisions of section 11. See *supra*, Notes to section 11.

U. P. Amendment.

Section 13.

NOTES.

This section, in its application to the United Provinces of Agra and Oudh, has been modified by section 5 of the United Provinces Public Gambling (Amendment) Act, 1917. See Appendix. The following is the text of the section as thus amended :—

13. *A police officer may apprehend without*

Gaming and setting warrant—

birds and animals to

fight in public streets.

any person found gaming in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment either simple or rigorous, for any term not exceeding one calendar month

And such Police-officer may seize all instru-

Destruction of instruments of gaming found in such public place or on the person of

those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

NOTES.

Gaming.—Gaming includes wagering or betting; but does not include betting on a horse race under certain conditions, nor does it include

'lottery'. See section 1, also section 2 of the United Provinces Public Gambling (Amendment) Act, 1917. Hence *mere betting* in a public place is an offence under this section. Betting on the price of cotton in a market place constitutes gaming in a 'public place' within the meaning of this section (*Sri Ram v. Emperor*, 21 A. L. J. 318.). But playing a game of mere skill in a public place is no offence. See section 13-A, *infra*.

A person is guilty under this section, who, though sitting on private premises, is taking bets from persons in a public street. See, *Emperor v Fakirbhat*, 28 Bom. L. R 92

Setting any birds or animals to fight.—Holding a cock fight in a public street is by itself punishable under this section. And if it be accompanied by betting on the result of such fight, the betting alone will amount to an offence of gaming in a public place, because 'gaming' as defined in section 2 of the Local Act I of 1917, includes mere betting.

Instruments of gaming.—Fighting birds and animals are not instruments of gaming (50 I. C. 666 and 671.). Hence they cannot be seized,

nor can a trying Magistrate order the same to be destroyed.

(NOTE.—For the rest of this section, consult notes to section 13 of the Imperial Act, *supra*. 'Imperial Act' means the Public Gambling Act, 1867, unaffected by the provisions of any U. P. Act.).

13-A. Nothing in this Act shall apply to
Exemption of games of mere skill. *any game of mere skill wherever played.*

NOTES.

General.—This section inserted by section 6 of the United Provinces Public Gambling (Amendment) Act, 1917, applies only to the United Provinces. It is analogous to section 12 of this Act; so refer to comments under that section. Section 12 is not in force in the United Provinces, having been repealed there by section 4 of the U. P. Act I of 1917.

The effect of section 13 A is to restrict the application of the Act to games of chance. Games of skill whether played in a house or other private place, or in a public place are excluded from its operation. In the Punjab and oth

Provinces to which this section does not apply, the same object has been achieved by means of sections 12 and 13. The former legalises games of mere skill when they are played in a house or other similar place; whilst the latter affords protection to players of such games in a public place.

Nothing in this Act shall apply—These words show that the owner or occupier of a house in which instruments of gaming are used for playing mere games of skill is not guilty of keeping a common gaming house within the meaning of section 3, even though he makes profit by such use of the house.

Any game of mere skill wherever played.—The words 'any game of mere skill' do not mean a game in respect of which there is no wagering or betting. So where the accused were playing for stakes a game with marbles on a public road, the game being one of mere skill, it was held that it was no offence under section 13, that being the result of the addition of section 13-A by the U. P. Act I of 1917 (*Panna Lal v. Emperor*, 24 A. L. J. 150.).

The judgment in this Allahabad case appears to be an authority for the view that playing a

game of skill for stakes in a public place, would be punishable under the Act as it stood prior to the passing of the U. P. Act I of 1917. The passage in point is as follows :—"It is not disputed that before the amendment of the said Act by U. P. Gambling (Amendment) Act, I of 1917, the conviction would have been in order."

With great respect to the authority of the Allahabad High Court, it is submitted that section 13-A inserted by the U. P. Act I of 1917 has not introduced any material alteration in the law. It appears that in section 13-A, the Legislature has merely reproduced the provisions of section 12 and of the old section 13 relating to exclusion of games of skill from the operation of the Act. The amendment of section 13 was effected with a view to include 'wagering or betting in a public street' within the prohibitions of the Act. Its object was not to do away with the existing exemption in favour of games of mere skill; it was therefore necessary to add a new section as section 13-A. The use of the words "in this Act" in section 13-A rendered section 12 superfluous which was consequently repealed.

The old section 13 lays down:—"A . . . officer may apprehend without warrant any

son found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game *not being a game of mere skill*, in any public street, etc." This means that playing a game of mere skill in a public place is not prohibited even though bets are laid on the result of the game. The enactment is directed against *something* which those wagering, themselves bring about for the purpose of settling the bet. That *something* must be a game, it must be played with some instrument, the play being carried out for the purpose of ascertaining the result upon which the eventual right to stakes depends (*Gajju v. Emperor*, 14 N. L. R. 19 Cr. L. J. 917.). The accused persons must be found playing for money with instruments of gaming, and the play must be a game *other than a game of mere skill*.

A discussion on this point has now a mere academic interest so far as the United Provinces of Agra and Oudh are concerned; but much importance attaches to the point from the fact that section 13 as it stood before the year 1917 still applies to the Punjab, the Central Provinces, and other places (see Preamble.).

Game of mere skill.—See Notes under section 12, *supra*.

Wherever played — That is, whether in private premises or in a public street, place or thoroughfare.

14. Offences punishable under this Act

Offences by whom shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, 1882, as to the amount of fine or imprisonment he may inflict.

NOTES.

Any Magistrate.—Even a Magistrate of the third class is competent to try an offence under this Act. The place where the offence has been committed must however, be within the territorial limits of his jurisdiction. See section 29 (1) of the Code of Criminal Procedure. Magistrate invested with only second or third class powers can neither enter a suspected house nor can they issue a search warrant under section 5, though they are empowered to try offences under the Act.

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NOTES.

Any Magistrate — Even a Magistrate of the third class is competent to try an offence under this Act. The place where the offence has been committed must however, be within the territorial limits of his jurisdiction. See section 29 (1) of the Code of Criminal Procedure. Magistrate invested with only second or third class powers can neither enter a suspected house nor can they issue a search warrant under section 5, though they are empowered to try offences under the Act.

Trial by Magistrate issuing warrant.—A Magistrate who issues a search warrant in exercise of the powers conferred by section 5 of this Act is not competent to try the case arising out of the search. It was so held in the *Burma case, Chhn Pin v. Emperor, 61 I C. 835, 22 Cr. L. J. 451*. This decision is based on the reasoning that the accused has a right to plead at the trial that the warrant under section 5 was issued on insufficient information and was thus illegal. The trying Magistrate should therefore in fairness to the accused, be one different from the Magistrate who issued the warrant. The latter having issued the warrant has already formed his opinion on the question of sufficiency of the information. Further, the Magistrate issuing a warrant is one who sets the law in motion and is therefore somewhat in the nature of a prosecutor. In issuing a warrant he is doing what a Police officer empowered is able to do. In either view of the matter, the spirit of section 556, Code of Criminal Procedure, is violated and its intention virtually defeated.

Lahore High Court —The same view has been taken by the Lahore High Court. A Magistrate issuing a warrant should not himself try the case

as the accused have a right to examine him as a witness as to the circumstances under which the warrant was issued by him (*Raja Ram v. Emperor*, 73 I. C. 521; 24 Cr. L. J. 633.).

Allahabad High Court.—The Allahabad High Court, dissenting from the Burma case, has held that the mere fact that a Magistrate has issued a search warrant prior to the institution of a case is not sufficient to disqualify him from trying the case within the meaning of section 556 of the Code of Criminal Procedure. Nor is his jurisdiction ousted by the mere possibility of an objection being taken by the accused that the warrant was issued on insufficient materials. The issuing of a warrant under the Gambling Act is analogous to recording a preliminary order in a proceeding under section 110, Criminal Procedure Code. In such proceedings, before commencing judicial inquiry, a Magistrate must make an order in writing setting forth the substance of the information received and calling on the accused to show cause why he should not furnish security for good behaviour. This preliminary order is frequently objected to as being one not in accordance with law, yet the possibility of such objection being raised has never been h

necessitate the transfer of the proceedings to another Magistrate (*Md. Ali Khan v. Emperor*, 5 A. I. Cr. R. 547).

A Magistrate who himself searches any premises in exercise of the powers conferred by section 5 cannot try the case arising out of such search.

Shall be restrained within the limits of his jurisdiction.—That is, the trying Magistrate shall not pass a sentence in excess of the powers conferred on him by the Code of Criminal Procedure. See section 32 of the Code, for sentences which may be passed by Magistrates.

Code of Criminal Procedure, 1882—Now see Code of Criminal Procedure, 1898 as amended. Also see section 3 (1) of the Code.

Procedure.—The procedure for the trial of summons cases should be followed in trying an offence under this Act. See sections 241–250 of the Code of Criminal Procedure, 1898 (as amended.).

Summary trial.—Offences punishable with imprisonment for a term not exceeding six months can be tried summarily; see section 200

(a) of the Code of Criminal Procedure, 1898. Hence all offences under this Act are summarily triable. See also section 4 (o) of the Code.

Joint trial.—See Notes under section 4, *supra*. Persons accused of different offences committed in the course of the same transaction may be tried together; see section 239, Code of Criminal Procedure, 1898, as amended by Act XVIII of 1923.

Punishment.—For enhanced punishment, see section 15, *infra*.

Section 562, Code of Criminal Procedure.—This applies to persons convicted of an offence under this Act. In an Oudh case, *King-Emperor, v. Shankar Dayal*, 1922 A. I. R. Oudh, 224; 71 I. C. 62, it was decided that section 18 (offences under this Act to be offences within the Indian Penal Code) of this Act having been repealed, section 562 of the Code had no application to an offence under this Act. But subsequent to this decision, the section was amended by Act XVIII of 1923, and now it covers an offence under this Act. This decision is therefore no longer good law. See, *Emperor v. Piara Singh*, 6 A. I. Cr. R. 84.

U. P. Amendment.

Section 14.

Notes.

Consult Notes under section 14 of the Imperial Act, *supra*.

Note.—‘Imperial Act’ means the Public Gambling Act, 1867, unaffected by the provisions any U. P. Act.

15. *Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act shall again be guilty of any offence punishable under either of such sections shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description;*

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

NOTES.

General.—This section does not constitute a separate offence; it only renders liable to enhanced punishment persons who having

been previously convicted of an offence under section 3 or section 4 are again found guilty of an offence under either of these sections. A person once convicted of an offence under section 13 is not liable under this section to a heavier penalty on a subsequent conviction under the same section. The maximum punishment provided by this section is a fine of Rs. 600 or a year's imprisonment. But such a sentence cannot be passed unless a person is convicted at one trial of two or more offences.

The sentence must, however, be commensurate with the gravity of the offence. Where the accused who were all employees of a mill, retired on a hot afternoon to the cool shade of a mosque and there amused themselves by playing cards for insignificant stakes, and on being convicted were sentenced each to fifteen days' imprisonment, it was held that the punishment was unduly severe and that a small fine would have been sufficient. See 41 B. 149. It is necessary in awarding punishment to exercise some discretion and to consider the circumstances of each case and the degree of guilt disclosed. See, 37 I. C. 329.

Similar provision is contained in section 13 of the Bengal Act II of 1867.

Offence punishable under section 3 or section 4.—But not an offence under section 13. In the eye of law, public gambling is not so serious a crime as keeping a common gaming house or being found therein.

Punishable under either of such sections.—A person convicted under section 4 is liable to enhanced punishment if he has been previously convicted of an offence under section 3 only.

Double the amount of punishment.—Under section 3 read with this section, a Magistrate is incompetent to pass any sentence exceeding a fine of Rs. 400, or 6 months' rigorous imprisonment (*Empress v. Chunni*, 1881 A. W. N. 111.). Under sections 4 and 15 of this Act, the utmost punishment allowed by the law is a fine of Rs 200 or rigorous imprisonment for 2 months. A sentence of 6 months' rigorous imprisonment passed on a person convicted under section 4, who had been seven times previously convicted under the same section was held to be illegal (*Empress v. Ganpat*, 1881 A. W. N. 129.).

To which he would have been liable.—This does not mean the amount of punishment actually awarded on the first conviction. It means the

maximum penalty which would have been inflicted but for some extenuating circumstances.

Offence of the same description.—An offence under section 3 is not of the same description as an offence under section 4.

Fine exceeding Rs 600one year.—A sentence of fine of Rs 600, or of imprisonment for one year cannot be passed on the accused until he has been convicted at one trial of two or more offences (*Empress v. Chunni*, 1881 A. W. N. 111.).

U. P. Amendment.

Section 15.

See Notes under section 15 of the Imperial Act, *supra*.

Note—'Imperial Act' means the Public Gambling Act, 1867. unaffected by the provisions of any U. P.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the monies

Portion of fine may be paid to informer.

proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer,

NOTES.

General.—This section empowers a Magistrate trying an offence under section 3 or section 4 to order payment of a reward to an informer. An order for payment of a reward to a police officer or witnesses is illegal. This section does not authorise the payment of any portion of fine levied under section 13, to any person.

For similar provisions in other enactments, see, section 16 of the Burma Act I of 1899; section 11 of the Bombay Act IV of 1887; section 50 of the Madras City Police Act, 1888; section 51 of the Calcutta Police Act, 1865; and section 14 of the Howrah Offences Act, 1857.

Magistrate trying the case.—This section does not authorise any court other than a trying Magistrate to direct payment of reward to an informer. It is doubtful whether an order under this section can be passed by an Appellate or Revisional court in exercise of the powers conferred by the Code of Criminal procedure. See sections 423 (d), 439 and 561A of the Code.

Any portion of any fine.—This means part of the fine or even the whole of it (*Queen-Empress v. Nga Po*, L. B. R. 1872-92, 378.).

Levied under sections 3 and 4.—Fine recovered under these sections only can be so disposed of. No order under this section can be made in respect of fine levied under section 13 (*Queen-Empress v. Nga Thu Zin*, L. B. R. 1872-92, 407.). The Magistrate is not competent to direct payment of certain rewards out of fine imposed under section 13 (*Sant v. Emperor* 18 P. R. 1891 Cr.). A Magistrate is not competent to order payment of a portion of the fine imposed upon the accused on a conviction under section 13, to the police officer for his efforts in the case (*Crown v. Ram Saran*, 2 P. R. 1870 Cr.).

Or any part of the monies forfeited.—When fines are imposed under section 4, and moneys or articles are forfeited, the Magistrate trying the case may award part or all of either the fines recovered, or the moneys or sale proceeds of articles forfeited, to the informer, but he cannot award both the fines, and the moneys and sale proceeds of articles forfeited. The use of the disjunctive 'or' in this section puts it out of the power of the Magistrate to award both the fine

and the confiscated property to the informer (*Queen-Empress, v. Nga Po, L. B. R. 1872-9, 378.*).

Proceeds of articles seized and ordered to be forfeited.—See sections 5 and 8, *supra*.

Informer.—It is only the informer who may be given a reward. There is no authority for rewarding an arresting officer out of the fine imposed under sections 3 and 4 or out of the moneys or sale-proceeds of articles seized and ordered to be forfeited (*Queen-Empress v. Nga Tha Zan, L. B. R. 1872-92, 407.*). A Magistrate has no jurisdiction to order distribution of fine inflicted on the accused on their convictions under sections 3 and 4, among the witnesses and the police (*Banwar Lal v. Emperor, 20 Cr. L. J. 303; 50 I. C. 351.*)

U. P. Amendment.

Section 16.

Consult Notes under section 16 of the Imperial Act, *supra*.

NOTE.—‘Imperial Act’ means the Public Gambling Act, 1867, unaffected by the provisions of any U. P. Act.

17. *All fines imposed under this Act may be recovered in the manner prescribed by section 61 of the Code of Criminal procedure, 1882, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time, direct.*

NOTES.

All fines imposed under this Act.—Including any penalty imposed under section 7 for withholding name and address.

Imprisonment for non-payment of fine.—On a conviction under this Act, imprisonment in default of payment of fine imposed, may be awarded. Section 65 of the Indian Penal Code has been made applicable to fines imposed under this Act, by section 25 of the General Clauses Act, 1897 (*Queen-Empress v. Ah Hein*, L. B. R. 1893-1900, 385.). Also see, *Emperor v. Radhe*, 5 A. I. Cr. R (1926), 460.

S. 61 of the Code of Cr. Pro., 1882.—This is incorrect; it is an instance of a patent inaccuracy in an enactment of the Legislature. Section 61 of the Code of 1882, contains no pro-

vision for the recovery of fines which forms the subject-matter of sections 386, 387 and 388. Under the present Code too, the procedure for the recovery of fine is laid down in sections 386-388, which see. Also see section 3 (1) of the Code.

Fines shall be applied.—The trying Magistrate is competent to order a reward to be paid to an informer out of the fine realised. The remainder, if any, left after such payment shall be applied as directed by the Local Government concerned. For rules made under this section, see, Local Rules and Orders for the several Provinces. Also see Appendix.

U. P. Amendment.

Section 17.

NOTES.

Fine shall be applied.—For orders for crediting fines to Municipal or Town funds, see U. P. Rules and Orders. Also see Appendix. For notes on other points, refer to comments under s. 17 of the Imperial Act, *supra*.

(Note.—'Imperial Act' Means Act III of 1867 unaffected by the provisions of any U. P. Act.).

18. (Offences under this Act to be "offences" within meaning of Penal Code.). *Repealed by Act XVI of 1874, section I, and Schedule, Part I.*

Appendix I.

The United Provinces Public Gambling (Amendment) Act, 1925.

United Provinces Act No. I of 1925.

Passed by the Local Legislature of the United Provinces of Agra and Oudh.

Received the assent of the Governor of the United Provinces of Agra and Oudh on the 25th. December 1924, and of the Governor General on the 31st. January, 1925, and was published under section 81 of the Government of India Act on the 14th February, 1925.

An Act further to amend the Public Gambling Act, 1867, in its application to the United Provinces.

Whereas it is expedient further to amend the Public Gambling Act, 1867, in its application to the United Provinces, it is hereby enacted as follows:—

1. (1) This Act may be called the United Provinces Public Gambling (Amendment) Act, 1925.

(2) It extends to all the territories for the time being administered by the Local Government of the United Provinces.

2. For the definition of the phrase "Common gaming house" in section 1 of the Public Gambling Act, 1867, as amended by the United Provinces Public Gambling (Amendment) Act, 1917, the following shall be substituted, namely:—

Common gaming house means —

(1) in the case of gaming on the digits of the sale price of any commodity, for example opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles, or on the occurrence or non-occurrence of any natural event, for example, rainfall or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which instruments of gaming are kept or used for such gaming;

(2) In the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying,

using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instrument, or otherwise howsoever.

Notes.

For comment on this Act, see Notes on pages 46-49.

Appendix II.

United Provinces Act V of 1919.

(Applies to the United Provinces)

(31st March 1919;
14th May 1919).

An Act further to amend the law in force in the United Provinces relating to Public Gambling.

Whereas it is expedient further to amend the law in force in the United Provinces relating to Public Gambling, and whereas the previous sanction of the Governor-General has been obtained as required by section 79 of the Government of India Act, 1915, (5 and 6 Geo. V, Chapter 61);

It is hereby enacted as follows:—

1. (1) This Act may be called the United Provinces Public Gambling (Amendment) Act, 1919.

(2) It extends to all the territories for the time Short title and extent. being administered by the Lieutenant-Governor of the United Provinces.

2. For the first paragraph of section 2 of the Amendment of section 2 of Act III of 1867. Public Gambling Act, III of 1867, the following shall be substituted, namely:—

Sections 13 and 17 of this Act shall extend to the whole of the said territories, and it shall be competent to the Lieutenant-Governor, whenever he may think fit, to extend by a notification to be published in the official Gazette, all or any of the remaining sections of this Act to any area within the United Provinces.

NOTES.

For statement of Objects and Reasons, see U. P. Gazette, 1918, part VII, p. 1218. For Report of Select Committee, see U. P. Gazette, 1919, part VII, p. 133. For proceedings in Council, see U. P. Gazette 1918, part VII, p. 1174, and *Ibid*, 1919, pages 28, 194 and 327.

For further Notes, see pp. 57 and 58.

Appendix III.

The United Provinces Public Gambling (Amendment) Act, 1917.

United Provinces Act No. I of 1917.

(Applies to the United Provinces).

[29th November, 1916;

20th December, 1916.]

An Act further to amend the law in force in the United Provinces relating to public gambling

Whereas it is expedient further to amend the law in force in the United Provinces relating to public gambling;

And whereas the sanction of the Governor General has been obtained under section 79 (2) of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the United
Short title. Provinces Public Gambling
 (Amendment) Act, 1917.

(2) It extends to all the territories for the time being administered by the Lieutenant-Governor of the United Provinces.

NOTES.

For statement of Objects and Reasons, see United Provinces Gazette, part VII, page 87. For the Report of Select Committee, see U. P. Gazette, 1916, Part VII, page 829. For Proceedings in Council, see U. P. Gazette, 1916, Part VII, pages 428, 708 and 888.

2. For the definition of "Common gaming Amendment of S. 1 of Act III of 1867. house" in section I of the Public Gambling Act, 1867, the following shall be substituted, namely:—

'Gaming' includes wagering or betting, except wagering or betting upon a horse race when such wagering or betting takes place—

(a) On the day on which such race is to run, and

(b) In an enclosure which the stewards controlling such race have with the sanction of the

Local Government, set apart for the purpose, but does not include a lottery;

'Instruments of gaming' includes any articles used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming;

"Common gaming house" means any house, room, tent, or walled enclosure, or space, or vehicle, or vessel, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instruments or otherwise howsoever.

NOTES.

For Notes, see pp. 35-49. The above definition of the term 'common gaming house' has been replaced by another contained in the U. P. Act I of 1925 (see *Supra*).

3. For the words "house, walled enclosure, room or place" in sections 3, 4, 5, 6, and 10 of the Public Gam-
Amendment of ss. 3, 5, 6, & 10 of Act III of 1927.

bling Act, 1867, wherever they occur, the words "house, room, tent, walled enclosure, space, vehicle, vessel or place" shall be substituted.

4. Section 12 of the Public Gambling Act.

Repeal of section 12 of 1867, is hereby repealed.
Act III of 1867.

5. For the words "playing for money or

Amendment of section 13 of Act III of 1867. other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill" in section 13 of the Public Gambling Act, 1867, the word "gaming" shall be substituted.

6. After section 13 of the Public Gambling

Insertion of new section 13-A in Act III of 1867. Act, 1867, the following section shall be inserted, namely:—

"13-A. Nothing in this Act shall apply to

Exemption of games of mere skill, any game of mere skill wherever played."

Appendix IV.

BENGAL ACT II OF 1867.

THE BENGAL PUBLIC GAMBLING ACT, 1867.

[10th April, 1867.]

As modified up to the 15th September, 1915.

An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant Governor of Bengal.

Whereas it is expedient to make provision for
Preamble. the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal; It is enacted as follows:—

1. In this Act “gaming” includes wagering
definitions or betting [except wagering or betting upon a horse race, when such wagering or betting takes place—

(a) on the day on which such race is to be run, and

(b) in an enclosure which the Stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose],

but does not include a lottery;

"instruments of gaming" includes any article used as a means or appurtenance of, or for the purpose of carrying on or facilitating, gaming; and

"common gaming-house" means any house, room, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle or place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instruments or otherwise howsoever.

NOTES.

This section is similar to section I of Act III of 1867 as amended by the U. P. Act I of 1917. See page 34, and notes on pp. 35-49. For local extent of this Act, see notes to S. 2 and S. 16, *post.* *Lieutenant-Governor*: Bengal is now governed by a Governor; see the Bengal, Bihar and Orissa and Assam Laws Act, 1912, S. 3, and Schedule D. Other Acts in force in Bengal, relating to gambling are: (1) the Howrah offences Act, 1857 (ss. 10 to 15, and 59); (2) the Fort William Act, 1881 (S. 3

and Sch., Art. 16); and (2) the Calcutta Public Act 1866 (ss. 3 and 44 to 51).

2. It shall be competent to the Lieutenant-Governor of Bengal whenever he may think fit, to extend, by a notification to be published in the Calcutta Gazette, all or any of the sections of this Act to any city town (save the town of Calcutta as defined by Act VI of 1863 passed by the Lieutenant-Governor of Bengal in Council) or place within the territories subject to his Government, and in such notification to define, for the purposes of this Act, the limits of such city, town or place, and from time to time to alter the limits so defined.

NOTES.

For places to which sections of this act have been extended, See the Bengal Local Statutory Rules and Orders, 1912, vol I, Pt. VI; also Calcutta Gazette, 1913, Pt. I, p 604; *ibid.* 19 4, Pt. I, pp 151 and 1976; *ibid.*, 1915, Pt. I, pp 247, 248, 317 and 1202 'Notification:' prior to the amendment of this section by S 5 (2) of the Bengal Act IV of 1913, a valid extension under this section could only be made by means of a notification published in three consecutive issues

"instruments of gaming" include used as a means or appurtenance purpose of carrying on or facilitating and

"common gaming-house" means room, tent, or walled enclosure, vehicle, or any place whatsoever, instruments of gaming are kept on profit or gain of the person owning using or keeping such house, room, enclosure, space, vehicle or place, whether charge for the use of such house, enclosure, space, vehicle, place or otherwise howsoever.

NOTES.

This section is similar to section 1 of 1867 as amended by the U. P. Act I page 34, and notes on pp. 35-49. For of this Act, see notes to S. 2 and S. 16. *tenant-Governor*: Bengal is now governed by the *Governor*; see the Bengal, Bihar and Assam Laws Act, 1912, S. 3, and S. 4. Other Acts in force in Bengal, relating to are: (1) the Howrah offences Act, 1857 (15, and 59); (2) the Fort William Act, 1

and Sch., Art 16); and (2) the Calcutta Public Act 1866 (ss. 3 and 44 to 51).

2. It shall be competent to the Lieutenant-Governor of Bengal whenever he may think fit, to extend, by a notification to be published in the Calcutta Gazette, all or any of the sections of this Act to any city, town (save the town of Calcutta as defined by Act VI of 1863 passed by the Lieutenant-Governor of Bengal in Council) or place within the territories subject to his Government, and in such notification to define, for the purposes of this Act, the limits of such city, town or place, and from time to time to alter the limits so defined.

NOTES.

For places to which sections of this act have been extended, See the Bengal Local Statutory Rules and Orders, 1912. vol I, Pt. VI; also Calcutta Gazette, 1913. Pt. I, p 604; *ibid.* 19 4, Pt. I, pp. 151 and 1976; *ibid.* 1915, Pt. I, pp. 247, 248, 317 and 1202. 'Notification:' prior to the amendment of this section by S. 5 (2) of the Bengal Act IV of 1913, a valid extension under this section could only be made by means of notification published in three consecutive

of the Gazette. See 18 W. R. Cr. 14. 'Act VI of 1863': this was repealed by Local Act IV of 1876 which again was repealed by Local Act II of 1888, and the latter was repealed and re-enacted by the Calcutta Municipal Act, 1899. *After the limit's*: boundaries once fixed under this Act cannot be altered otherwise than under this section.

3. Whoever, being the owner or occupier,
 Penalty for owing or or having the use, of any
 keeping, or having charge of common gaming house, tent, room, space
 house, or walled enclosure, situate
 within the limits to which this Act applies, opens,
 keeps or uses the same as a common gaming-house;

and whoever, being the owner or occupier of
 any such house, tent, room, space or walled enclosure as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house;

and whoever has the care or management of,
 or in any manner assists in conducting, the busi-

ness of any house, tent, room, space or walled enclosure as aforesaid, opened, occupied, used or kept for the purpose aforesaid;

and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, tent, room, space or walled enclosure,

shall be liable, on conviction before any Magistrate, to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code for any term not exceeding three months.

NOTES.

See notes to S. 3 of Act III of 1857 (*Supra*) which is analogous to this section.

4. Whoever is found in any such house, tent, room, space, or walled enclosure, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, or assisting therein for any money, wages, value or advantage, shall be liable, on conviction before any Magistrate, to a fine not exceeding one hundred rupees.

dred rupees or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month; and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

NOTES.

For comment on this section, see Notes on section 4 of Act III of 1867, *supra*. 'Playing': mere playing (without stakes) with instruments of gaming in a common gaming-house is an offence under this section. 'Contrary be proved': the onus is on the accused to show that he was not there for the purpose of gaming.

5. If the Magistrate of a district or other

Power to enter and authorize Police to enter and search.

officer invested with the full powers of a Magistrate or the

District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, tent, room space or walled enclosure is used as a common gaming-house;

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, tent, room, space or walled enclosure, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not such persons may be then actually gaming ;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein ;

and may search or authorize such officer to search all parts of the house, tent, room, space or walled enclosure which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

NOTES.

For comment on this section, see Notes to section 5 of the Imperial Act (III of 1867), *supra*. 'Reason to believe' connotes a great deal more than the expression 'cause to suspect' conveys; and a warrant issued on suspicion is illegal. See, *B. wolveker v. Emperor*, 6 A. I. Cr. R (1916), 409.

6. When any cards, dice, gaming-table, cloth,

Finding cards, etc., boards or other instruments of gaming are found in any house, in suspected houses to be evidence that they are common gaming-tent, room, space or walled houses.

enclosure entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, tent, room, space or walled enclosure is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer or by any person acting under the authority of either of them.

NOTES.

* For Notes on this section, see comment on section 6 of the Imperial Act (III of 1867), *supra*. This section does not warrant a presum-

ption against any particular individual as being the keeper of a common gaming house.

7. If any person found in any common gaming-house entered by any ^{Penalty for giving false name or address.} Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

NOTES.

For comment on this section, see Notes on section 7 of the Imperial Act (III of 1867), *supra*. '*Entered*': where a suspected house is

or any person setting any birds or animals to fight in any public market, fair, street, place or thoroughfare situated within the limits aforesaid,

or any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month,

and such police-officer may seize all birds and animals and instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed and such birds and animals to be sold.

NOTES.

'*Gaming*': includes betting or wagering; so mere betting in a public place without any instruments of gaming is an offence. Fighting birds and animals cannot be ordered to be destroyed. They are not instruments of gaming (50 I. C. 666). See

notes under section 13 of the Imperial Act (III of 1867), *supra*.

11A. Nothing in this Act shall apply to
Exemption of games
of mere skill. any game of mere skill where-
ver played.

NOTES.

For Notes on this section, see pp. 173-179.
'Game of mere skill': ring-game is one of skill (6
C. L. J. 708 ; 17 C. W. N. 883). Contra, *Ram
Nawaz Lal v. Emperor*, 15 Cr. L. J. 276. But
see 61 I. C. 518.

12. Offences punishable under this Act shall
Offences by whom
triable. be triable by any Magistrate
having jurisdiction in the place
where the offence is committed. But such Ma-
gistrate shall be restrained within the limits of
his jurisdiction under the Code of Criminal Pro-
cedure as to the amount of fine or imprisonment
he may inflict.

13. Whoever, having been convicted of

Penalty for subsequent offence. offence punishable under this Act, shall be guilty of any such offence, shall be subject for every such subsequent offence to double the amount of punishment to which he would otherwise have been liable for the same :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees or to imprisonment for a term exceeding one year.

NOTES.

Enhanced punishment under this section can be awarded for any offence under this Act. For further comment on this section, see Notes on p. 224.

14. All fines imposed under this Act shall
Application of fines. (subject to the provisions contained in the last preceding section) be applied as the said Lieutenant-Governor shall from time to time direct.

NOTES.

The exact significance of the words within brackets is not clear.

15. Anything made punishable by this Act shall be deemed to be an "offence" within the meaning of the Indian Penal Code.

Application of definition of "offence" in Indian Penal Code.

NOTES.

For the definition of the term "offence", see section 40 of the Indian Penal Code.

16. The provisions of section 7 and 11 of this Act shall apply to the town of Calcutta, and to the suburbs of the town of Calcutta as the same may be from time to time defined by any notification published by the Lieutenant-Governor in pursuance of Act II of 1866 passed by the Lieutenant-Governor of Bengal in Council; and the provisions of section 13 of this Act shall apply to the whole of the said territories.

Certain sections to apply this Act shall apply to the town without extension.

NOTES.

Section 13 applies to the whole of Bengal. Ss. 7 and 11 apply to the town and suburbs of Calcutta. Other sections of the Act are inoperative unless

brought into force in any place in accordance with the provisions of s. 2.

17. (*Repeal of sections of Bengal Acts II and IV of 1866.*) Rep. by the Amending Act, 1903 (I of 1903).

Appendix V.

THE BOMBAY PREVENTION OF
GAMBLING ACT.

Bombay Act No. IV of 1887.

An Act to consolidate and amend the law for the prevention of Gambling in the presidency of Bombay.

Whereas it is expedient to consolidate and amend the law for the prevention of gambling in the presidency of Bombay ; It is enacted as follows:—

1. This Act may be cited as the Bombay
Short title *Prevention of Gambling Act,*
1887.

It extends to the City of Bombay, to the Island of Salsette, to all railways and railway station-houses without the said city and island, and to all places not more than three miles distant from any part of such station-houses, respectively, and all or any of its provisions may be extended from time to time by the Governor in Council, by an order published in the Bombay Government Gazette, to any local area in the Presidency of Bombay.

The Governor in Council may, from time to time, by an order published as aforesaid, cancel or vary any order made by him under this section.

2. [*Repeal of Enactments.*]. *Repealing Act XVI of 1895.*

3. In this Act "gaming" includes wagering or betting except wagering or betting upon a horse-race, when such wagering or betting takes place—

(a) on the day on which such race is to be run, and

(b) in an enclosure which the licensee of the race course, on which such race is to be run,

has set apart for the purpose under the terms of the license issued under section 4 of the Bombay Race-course Licensing Act, 1912, in respect of such race-course, and

(c) between any individual in person on the one hand and such licensee on the other hand in such manner and by such contrivance as may be permitted by such license; but does not include a lottery.

Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever to wager or bet whether with such licensee or with any other person shall be deemed to be "gaming": Provided, nevertheless, that such licensee may employ servants, and persons may accept service with such licensee, for wagering or betting in such manner or by such contrivance as may be permitted in such license.

In this Act, the expression "Instruments of Gaming" includes any article used as a subject or means of gaming and any document used as a register or record or evidence of any gaming.

In this Act "common gaming-house" means a house, room or place in which any instruments of

gaming are kept or used for the profit or gain of the person owning, occupying or using or keeping such house, room or place, whether by a charge for use of the instruments of gaming or of the house, room or place, or otherwise howsoever.

4. Whoever—

Keeping common gaming house. (a) being the owner or occupier or having the use of any

house, room or place, opens, keeps or uses the same for the purpose of a common gaming-house,

(b) being the owner or occupier of any such house, room or place, knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

(c) has the care or management of, or in any manner assists in conducting the business of any such house, room or place opened, occupied, kept or used for the purpose aforesaid,

(d) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place,

shall be punished—

(a) for a first offence with imprisonment which

may extend to three months or with fine which may extend to five hundred rupees;

(b) for a second offence with imprisonment which may extend to six months, and in the absence of special reasons to the contrary, to be mentioned in the judgment of the court, shall not be less than seven days, either with or without fine which may extend to one thousand rupees; and

(c) for a third or subsequent offence with imprisonment which may extend to six months, and in the absence of special reasons to the contrary, to be mentioned in the judgment of the Court, shall not be less than one month, together with fine which may extend to one thousand rupees.

5. Whoever is found in any common gaming-house gaming or present for the purpose of gaming shall be punished with fine which may extend to two hundred rupees or with imprisonment which may extend to one month.

Any person found in any common gaming-house during any gaming therein shall be presumed, until the contrary be made to appear, to have been there for the purpose of gaming.

6. It shall be lawful for the Commissioner of Police in the City of Bombay, and elsewhere for any Magistrate of the First Class or any District Superintendent of Police or for any Assistant Superintendent of Police empowered by Government in this behalf upon any complaint made before him on oath that there is reason to suspect any house, room or place to be used as a common gaming-house, and upon satisfying himself after such enquiry as he may think necessary that there are good grounds for such suspicion, to give authority, by special warrant under his hand, when in his discretion he shall think fit, to any Inspector, or other superior officer of Police, of not less rank than a Chief Constable—

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force if necessary, any such house, room or place; and

(b) to take into custody and bring before a Magistrate all persons whom he finds therein, whether they are then actually gaming or not; and

(c) to seize all instruments of gaming, and all moneys and securities for money, and articles of

value reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein; and

(d) to search all parts of the house, room or place which he shall have so entered, when he shall have reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he shall so find therein or take into custody and to seize and take possession of all instruments of gaming found upon such search.

7. When any instruments of gaming are found.

Proof of keeping, or in any house, room or place of gaming in, common gaming house, entered under warrant issued.

under the provisions of the last preceding section, or about the person or any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, room or place is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no gaming was actually seen by the Magistrate or police officer, or by any person acting under the authority of either of them.

8. On conviction of any person for opening,

On conviction for keeping or using a common gaming-house, or gaming therein, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein or on the persons of those who were found therein, to be forthwith destroyed; and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and the proceeds thereof, with all moneys seized therein, to be forfeited; or, in his discretion, may order any part of such proceeds and other moneys to be paid to any person appearing to be entitled thereto.

9. It shall not be necessary, in order to convict a person of any offence against any of the provisions of sections 4 and 5, to prove that any person found gaming was playing for any money, wager or stake.

NOTES.

In this section, the word 'gaming' was substituted for the original words 'playing at any game'.

by the Bombay Act VI of 1919, s. 6.

10. Every person who shall have been concerned in any gaming contrary to this Act, and who shall be examined as a witness by or before a Magistrate on the trial of any charge against the owner, keeper or occupier or other person having the care or management of any common gaming-house, touching such gaming, and who upon such examination shall make true and faithful discovery to the best of his knowledge of all things as to which he shall be so examined, and who shall thereupon receive from the said Magistrate a certificate in writing to that effect, shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

11. The Magistrate trying any case under the provisions of sections 4 and 5 may direct any portion not exceeding one-fourth of any fine which may be levied under either of the said sections, or any part of the proceeds of articles or moneys seized and ordered to be forfeited under section 8, to be paid to an informer.

12. A Police Officer may apprehend without

Power to arrest with warrant—
 out warrant for gaming, (a) Any person found gaming
 and setting birds and animals to fight in pub in any public street, or thorough-
 lic streets fare, or in any place to which
 the public have or are permitted to have access,
 or in any race course;

(b) Any person setting any birds or animals
 to fight in any public street, or thoroughfare, or
 in any place to which the public have or are per-
 mitted to have access,

(c) Any person there present aiding and abet-
 ting such public fighting of birds and animals.

Any such person shall, on conviction, be pun-
 ished with fine which may extend to fifty rupees,
 or with imprisonment which may extend to one
 month. And where such gaming consists of
 wagering or of any such transaction as is referred
 to in the definition of gaming given in section 3,
 any such person so found gaming shall, on convic-
 tion, be punished in the manner and to the extent
 referred to in section 4, and all monies found with
 such person shall be forfeited.

And such police officer may seize all birds
 and animals and instruments of
 gaming found in such public
 Seizure and destruc-
 tion of instruments of
 gaming found

street, thoroughfare, place or race-course or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed, and such birds and animals to be sold and the proceeds to be forfeited.

NOTES.

The words "or thoroughfare...have access" in clauses both (a) and (b) were substituted for the original words "place or thoroughfare" by the Bombay Act I of 1910.

13. Nothing in this Act shall be held to ^{Having of games of} apply to any game of mere skill ^{more skill.} wherever played.

Appendix VI.

The Burma Gambling Act.

Burma Act No. I of 1899.

10th March, 1899;]

1st April, 1899.]

An Act to provide for the punishment of public gambling and the keeping of common gam-

ing-houses and for the suppression of certain forms of gaming.

Whereas it is expedient to make provisions for the punishment of public gambling and the keeping of common gaming-house and for the suppression of certain forms of gaming: It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Burma
Short title, etc. Gambling Act, 1899; and

(2) It extends to the whole of Burma except the Shan States.

2. The Burma Gambling Act, 1884, is hereby
Repeal. repealed; and the Public Gambling Act, 1867, shall from the commencement of this Act cease to be operative in Burma.

3. In this Act, unless there is anything
Interpretation clause. repugnant in the subject or context—

(1) "Common gaming house" means any house, enclosure, room, vessel or place, whether public or private, in which (a) any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such

house, enclosure, room, vessel or place, whether by way of charge for the use of the instruments of gaming as such, or of the house, enclosure, room, vessel or place, or otherwise howsoever for gaming purposes; or where (b) the game of *it* or any other game or pretended game of a like nature is carried on;

(2) The words "gaming" and "playing" with "Gaming" and "Play- ing", their grammatical variations and cognate expressions include taking part in the game of *it* or in any other game or pretended game of a like nature;

(3) The expression "instruments of gaming" means and includes (a) any cards, dice, counters, coins, gaming tables, gaming cloths, gaming boards or other articles, devised or actually used for the purpose of gaming; (b) any boxes, receptacles, lists, papers, tickets or forms used for the purpose of the game of *it* or any other game or pretended game of the like nature.

4. Nothing in this Act shall be held to apply to any game of mere human skill wherever played.

5. A police officer may arrest without war-
Power to arrest with-
out warrant. rant any person who in any
 street or thoroughfare, or place
 to which the public have access, and within the
 view of such police officer—

(a) solicits or collects stakes for the game of
ti or any other game or pretended game of a like
 nature; or

(b) plays for money or other valuable thing
 with any instruments of gaming; or

(c) sets birds or animals to fight; or

(d) being there present aids and abets such
 public fighting of birds or animals.

And such police officer may seize all instru-
Power to seize instru-
ments of gaming. ments of gaming found in such
 place or on the persons of those
 whom he shall so arrest.

6. (1) If the District Magistrate or any Sub-
Power to enter and
authorize police to enter
and search suspected
houses, etc. divisional Magistrate or Magis-
 trate of the first class, or a Magis-
 trate, second class, specially em-
 powered by the Local Government in this behalf,
 or the District Superintendent of Police, on cre-
 dible information or on other sufficient grounds,

has reason to believe that any house, enclosure, room, vessel or place is used as a common gaming-house, he may, after recording in writing such information or grounds, either himself do any of the following acts or by warrant authorise any officer of police not below the rank of sergeant or officer in charge of a police-station to—

(a) enter, within seven days from the date thereof, with such assistance as may be found necessary, be night or by day, and by force if necessary, any such house, enclosure, room, vessel or place; and

(b) take into custody all persons whom he finds therein, whether they are then actually gaming or not; and

(c) seize all instruments of gaming and all moneys and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein; and

(d) search all parts of the house, enclosure, room, vessel or place, which he shall have so entered, when he has reason to believe that any instruments of gaming are concealed therein and also the persons of those whom he so takes into

custody, and seize and take possession of all instruments of gaming found upon such search.

(2) No Magistrate or District Superintendent of Police recording the substance of the information or grounds of belief under sub section (1) shall be bound to specify therein the name of any informer.

(3) All searches under sub-section (1) shall be made in accordance with the provisions of sub section (3) of section 102, and of section 103 of the Code of Criminal Procedure, 1898

(3) When any house, enclosure, room, vessel or place is entered under sub section (1) by a police officer, he shall, immediately after the completion of the proceedings, under that sub-section, submit a report of such proceedings, together with the warrant (if any), to a Magistrate who has jurisdiction to take cognizance of any offence which appears to have been committed and take or send to such Magistrate the persons arrested and articles seized Provided that the police officer may release the persons so arrested on bail or on their own recognizance, conditioned to appear before such Magistrate, and, unless he produces such persons before a Magistrate within

three hours from the arrest, he shall release them on such bail or recognizance as may be reasonably sufficient ; Provided also that if no persons are arrested, the police officer shall submit a report of his proceedings to the Magistrate who issued the warrant, if any.

7. When any instruments of gaming are found in any house, enclosure, room, vessel or place entered under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be presumed, until the contrary is proved, that such house, enclosure, room, vessel or place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police officer or by any one aiding in the entry.

8. It shall be lawful for the Magistrate before whom any persons are accused of an offence under this Act to require any such persons to give evidence touching any unlawful gaming, or touching anything done with reference to, or in furtherance of, any unlawful gaming or touching any act done

for the purpose of preventing, obstructing, or delaying the entry into any house, enclosure, room, vessel or place or any part thereof of any Magistrate or officer authorized to make such entry.

9. Any persons who shall have been concerned in gaming contrary to this Act and who shall be examined.

Witnesses to be absolved from punishment.

(under section 8 or otherwise) as a witness before a Magistrate on the trial of any person for an offence under this Act and who, upon such examination, shall in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall thereby be absolved from punishment for any offence under this Act committed by him during such gaming.

10. Any person who in any street or thoroughfare or place to which the public have access—

Penalty for gaming or setting birds or animals to fight in public street.

(a) plays for money or other valuable thing with any instruments of gaming; or

(b) sets any birds or animals to fight; or

(c) being there present aids and abets such public fighting of birds or animals,

shall be liable to a fine not exceeding fifty rupees, or to imprisonment for any term not exceeding one month.

11. Whoever plays in any common gaming-

Penalty for playing house or is there present for the purpose of gaming, whether or not actually playing, shall be liable for a first offence to a fine not exceeding one hundred rupees, or to imprisonment for any term not exceeding one month, and for a subsequent offence to a fine not exceeding two hundred rupees, or to imprisonment for any term not exceeding two months.

12. Whoever—

Penalty for owning or keeping or having charge of a gaming-house. (a) being the owner or occupier or having the use of any house, enclosure, room, vessel or place, opens, keeps or uses the same as a common gaming-house ; or

(b) being the owner or occupier of any house, enclosure, room, vessel or place, knowingly permits the same to be opened, used or kept as a common gaming-house ; or

(c) has the care or management of or in any manner assists in conducting the business of any common gaming-house ; or

(d) advances or furnishes money for the purpose of gaming with persons frequenting any common gaming-house, shall be liable for a first offence to a fine not exceeding five hundred rupees or to imprisonment for any term not exceeding three months, and for a subsequent offence to a fine not exceeding one thousand rupees or to imprisonment for any term not exceeding six months.

13. Whoever—

Penalty on conducting game of *ts* and like games. (a) conducts or assists in conducting the game of *ts* or any other game or pretended game of a like nature, as a manager, stake-holder or *Dang* ; or

(b) is according to the rules of the game or pretended game entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes after deducting the amount payable to the successful player or players ; or

(c) promotes the game or pretended game by soliciting or collecting stakes or otherwise,

shall be punished with imprisonment for a term which may for a first offence extend to six months and for a subsequent offence to two years or with fine or with both.

14. No court shall try an offence—

Bar to prosecution in (a) under section 10 or section 11 unless a complaint or report or information in respect thereof has been made or given to or cognizance thereof has been taken by a Magistrate within seven days of the date of the alleged commission of the offence ; or

(b) under section 12 or section 13, unless a complaint or a report or information in respect thereof has been made or given to or cognizance thereof has been taken by a Magistrate within one month of the date of the alleged commission of the offence.

15. (1) On the conviction of any person for an offence under sections 11, 12 or 13 committed in any common gaming-house entered under the provisions of section 6, the convicting Magistrate may order any instruments of gaming found therein to be destroyed, and may also order any other articles seized to

be sold and converted into money, and the proceeds thereof with all monies seized therein to be forfeited ; or in his discretion may order any of such articles and the whole or any part of such moneys to be returned to the persons appearing to have been severally thereunto entitled.

(2) On the conviction of any person for an offence under clause (a) of section 10 or under sections 11, 12 or 13, the convicting Magistrate may order all instruments of gaming seized under section 5 to be destroyed or forfeited.

16. The Magistrate trying the case may ^{Portion of fine may direct any portion of any fine be paid as reward} which shall be levied under sections 10, 11, 12 and 13, or any part of the monies or proceeds of articles seized and ordered to be forfeited under this Act to be paid to any person who has contributed in any way to the conviction.

17. Where a District Magistrate, Sub-divisional Magistrate, or where he ^{Power to demand security} is specially empowered in this behalf by the Local Government a Magistrate of the first class, receives information that any person within the local limits of his jurisdiction ;

earns his livelihood, wholly or in part, by unlawful gaming or by promoting or assisting in the promotion of unlawful gaming, he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure, 1898; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise.

Appendix VII.

Notifications and Orders relating to the Central Provinces. See Section 2 of Act III of 1867.

Notification No. 8502, D/- the 23rd November, 1893.—(C. P. Gaz., Pt. II, p. 266.). Under section 2 of Act III of 1867 (The Gambling Act), the Chief Commissioner is pleased to extend all the sections of that Act, which are not named in Section 2, to the tract of land lying between the Railway station at Sntna and the eastern boundary of the Jubbulpore District.

Not. No. 320, D/- 18-1-1895.—C. P. Gaz., Pt. III, pp. 41 to 45.

Not. No. 2236, D/- 26-11-1908.- C. P. Gaz.,
Pt. I, p. 870.

Under section 2 of Act III of 1867 (The Gambling Act), the Chief Commissioner is pleased to extend the provisions of the said Act which are not named in that section to the undermentioned towns in the Central Provinces, and to declare that the limits of such towns, for the purposes of the Act, shall be as noted against each. This notification supersedes the following notifications:—No. 2862, dated 17-7-1867; No. 3847, dated 25-10-1872; No. 3226, dated 21-8-1885; No. 5966, dated 22-11-1887; No. 2446, dated 18-4-1889; which are hereby cancelled, with effect from the date on which this notification takes effect.

Nagpur.—Nagpur; Ramtek; Kalmeshwar; Khapa; Saoner; Mowar; Umrer. *Bhandara.*—Bhandara; Tumsar; Pauni; Gondia (see Not. No. 13155, D/- 8-11-1905.- C. P. Gaz., Pt. III, p. 563.). *Wardha.*—Wardha; Deoli; Hingan-ghat; Arvi; Nandpur Tahsil Arvi (see Not. No. 152/414—A/V, D/- 4-4-1921.). *Chanda.*—Chanda; Warora. *Balaghat.*—Burha (Balaghat); Lalbara*; Waraseoni*; Kataungi*. *Jubbulpore.*—Jubbulpore; Sehora; Murwara; Patan*; Puna-

gar*; Deori*. *Saugor*.—Saugor; Khurai; Garhakota*; Deori; Rehli*; Etawah* (including the Railway station of Bina); Rahatgarh*; Jeysinghnagar*; Dhana*; Khimlasa*. *Damoh*.—Damoh; Hatta*. *Seoni*.—Seoni; Lakhnadon*; Chapara*. *Mandla*.—Mandla; Baharkheri*; Lallpur*; Binjha*; Purwa*; Mabrajpur*; Bamui*; Herdeynagar*; Pendrai*; Narainganj*; Shahpura*; Mahedwani*. *Hoshangabad*.—Hoshangabad; Sobagpur; Pachmarhi; Seoni; Harda; Itarsi*; Timurni*; Sobhapur*; Babai*. *Narsinghpur*.—Narsinghpur; Gadarwara; Chindwara; Chargaon, Mohpani and Richhai (see notification No. 109-299—A-V, D/- 2-4-1921;—C. P. Gaz., Pt. I, v. 389.); Barehta*; Chichli*; Kareli*; Kowria*; Singhpur*; Tendukhera*; Kareliganj*. *Betul*.—Betul; Badnur; Multai*. *Chindwara*.—Chindwara; Pandburna; Sausar; Lodhikhera*; Mohgaon*. *Nimar*.—Khandwa; Burhanpur; Bhamgarh*; Shahara*; Borgaon*; Alamganj*; Babadurpura*; Zainabad*; Mandhatta*; Godurpura*; Pandhana*. *Buldana* (vide Not. No. 333/54—G, D/- 9-12-1918).—Jalamb; Nandura Buzruk; Nandura Khurda; Deulgaon-Raja. *Raipur*.—Raipur; Dhamtari; Gudhriari (vide Not. No. 189-465—A, D/- 7-6-1919.—C. P. Gaz., Pt. I, p. 704); Rajim (vide Not. No. 89-320—C, D/-

6-3-1917.—C. P. Gaz., Pt. I, p. 871.); Nawa-para (see C. P. Gaz., 1917, Pt. I, p. 871.; Bhata-para notified area (see Not. No. 738 of 9-4-1914 C. P. Gaz., Pt. I, p. 482); Bhatapara (see Not. No. 1422, D/- 3-7-1912.—C. P. Gaz., Pt. I, p. 561.); Arang*; Baloda*. *Bilaspur*.—Bilaspur; Torwan with Chuchupara (Not. No. 169/411-3, D/- 11-6-1918—C. P. Gaz., Pt. I, p. 477.); Bilaspur Ry. Station and Settlements as included in the railway wire fencing (Not. No. 170/411-C, D/- 11-6-1918.); Ratanpur*; Mungeli*; Janjgir*, Pandaria*; Pendra*. *Drug*.—Drug*, (Not. No. 1843, D/- 7-3-1916—C. P. Gaz., Pt. I, p. 1224), Deokar*; Bismetara*; Balod*;

* These towns are non municipal.

See section 5 of Act III of 1867.

No Police Officer below the rank of Sub-Inspector or Sergeant authorized under section 5 of the Public Gambling Act (No. III of 1857) is competent to take action under the Act. See Not. No. 62, D/- 5-2-1907.—C. P. Gaz., Pt. I, p. 68.

See section 17 of Act III of 1867.

Fines recovered in Municipalities in the Central Provinces, under section 17 of the Public

Gambling Act, 1867, should be credited to Municipal Funds. Vide Chief Commissioner's Book Circular XXXII of 1868; also Municipal Manual, Section III, p. 35.

Appendix VIII.

Notifications and Orders relating to the United Provinces of Agra and Oudh. See section 2 of Act III of 1867.

No. 2195/VI-349-1909 of 1910 (see U. P. Gazette, dated the 25th June, 1910, Pt. I, p. 598) —In supersession of notification No 65.-VI/133, dated the 18th March 1896, and all previous notifications, and under the powers conferred by section 2 of the Public Gambling Act, 1867 (III of 1867), the Lieutenant-Governor of the United Provinces of Agra and Oudh is pleased to extend the sections of the said Act that are not already in force to the places mentioned in the schedule annexed within the boundaries set forth in the 4th column of the schedule; and under section 5 of the said Act to appoint Inspectors of Police and all officers in charge of Police stations not below the rank of Sub Inspector, as the officers

who may be authorized to exercise the powers described in this section.

List of towns in the United Provinces of Agra and Oudh to which Act III of 1867 (the Public Gambling Act) has been extended.

Dehra Dun—Dehra, Dehra cantonment, Mussoorie; Landour cantt, Chakrata cantt; Rajpur *Saharanpur*.—Saharanpur, Hardwar, Jwalapur, Kankhal, Roorkee, Deoband, Libarheri Manglaur, Rampur, Gangoh, Nakur, Sultanpur Chilkhana *Muzaffarnagar*.—Muzaffarnagar, Shamli, Burdhana, Jansath, Miranpur, Kandhla, Khatauli, Kairana *Meerut*.—Meerut, Ghaziabad; Bagpat, Baraut, Sirdhana, Hapur, Shahdara, Mawana; Garhmuktesar, Khekra, Chaprauli, Meerut cantt *Bulandshahr*—Bulandshahr; Khurja; Anupshahr, Sikandrabad, Dibal, Jahan-girabad, Gulaothi Shikarpur *Aligarh*—Koel, Hathras, Atrauli, Sikandra Rao, Sikandra Rao railway station *Muttra*—Muttra, Muttra cantt, Muttra (within a radius of one mile of the Muttra City Railway Station), Brindaban, Kosi, Chhata, Mahaban, Gokal, Sadabad *Agra*—Agra, Agra cantt, Fetehpur-Sikri, Firozabad. *Farrukhabad*—Farrukhabad—*cum*—Fatehgarh, Fatehgarh and Farukhabad railway station, Fatehgarh cantt

Chhibramau; Kanauj; Kaimganj; Shamsabad; Miran-ki-sarai railway station. *Mainpuri*.—Mainpuri; Shikohabad railway station; Shikohabad; Karhal; Bhongion; Sirsaganj *Etawah*.—Etawah; Auraiya; Phapund; Jaswantnagar; Ekdil *Etah*.—Etah; Soron; Kasganj; Aliganj; Jalesar; Murehra and Ganjdundwara (see Not. on p. 1017 of Pt. I of U.P. Gaz., D/- 26-5-1920). *Bareilly*.—Bareilly; Aonla; Faridpur *Moradabad*.—Moradabad; Chandausi; Amroha; Sambhal; Thakurdwara; Kanth; Hisanpur; Darhatal; Bilari; Kunderki; Sirsi; Bachraon; Daanoura. *Bijnor*.—Bijnor; Chandpur; Dhampur; Nagina; Najibabad. *Shahjahanpur*.—Shahjahanpur; Tilhar; Jalalabad; Pawayan. *Budaun*.—Budaun; Bilsa; Sahaswan; Ujhani; Kakrala; Islamnagar; Gunnaur; (Also see Not. No. 1973/VI-922, D/- 7-4-1921.—U. P. Gaz., D/- 10-4-1920, Pt. I p. 583.). *Pilibhit*.—Pilibhit; Bisalpur. *Allahabad*.—Allahabad; Allahabad cantt; Mau Aima; Phulpur; Sipahdarganj. *Cawnpore*.—Cawnpore E. I. Ry. station; Cawnpore cantt; Bitbur; Bilhaur; Akbarpur; M. Jubi Khurd. *Fatehpur*.—Fatehpur; Bindki; Jahanabad; Sheorajpur and Khajuba (see Not. No. 2295/VI-1054, D/- 27-4-1920.—U. P. Gaz., Pt. I, p. 659). *Banda*.—Rajapur; Banda; Karwi. *Hamirpur*.—Hamirpur; Mandna; Manoba; Kath;

Kulpahar. *Jhansi*.—Jhansi; Jhansi cantt; Mau Ranipur; Lalitpur. *Jalaun*—Orai; Kalpi; Kunch; Jalaun. *Ghazipur*.—Ghazipur; Muhammadabad Usufpur; Zamania; Saiyidpur; Bahadurganj. *Benares*—Benares, Ramnagar; Railway station of Mogal Sarai. *Mirzapur*.—Mirzapur, Chunar; Ahraura. *Ballia*.—Ballia, Rasra, Maniar, Sikan-darpur, Baragaon, Sahatwara, Reoti, Baira, Bansdih. *Jaunpur*—Jaunpur, Machhlisbahr, Shahganj, Mungra Badshahpur notified area (see Not. No. 1104/VI-1676 D/ 24-2-1920.—U. P. Gaz, Pt. I, p 349). *Gorakhpur*.—Gorakhpur, Gorakhpur notified area. Padrauna-cum Shibganj. *Basti*.—Basti. *Azamgarh*—Azamgarh, Mau, Mubarakpur, Muhammadabad. *Naini Tal*—Naini Tal, Haldwani, Ramnagar, Kashipur, Jas-pur. *Almora*.—Ranikhet cantt. Almora. *Garh-wal*.—Srinagar. *Lucknow*.—Lucknow, Malha-bad, Kakori. *Unao*—Unao, Nowalganj, Maharaj-ganj, Purwa, Bhagwantnagar; Moradabadganj, Bangarmau, Safipur. *Rae Bareilly*—Rae Bareilly, Salon, Dalmau, Atrehta (Maharajganj) and Nasira-bad (see Not. No. 1701/VI-370, D/ 20-3-1920.—U. P. Gazette, Pt. I, p 534). *Sitapur*.—Sitapur, Biswan, Kaurabad; Mirikhi; Mahmudabad; Laharpur; Machhchatti; Nalukhar. *Hardoi*—Hardoi, Shahabad; Sandila; Bilgram;

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Etah—Etah; Soron; Kasganj; Aliganj; Jalesar;
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 Bijnor; Chandpur; Dhanpur; Nagina; Najibabad.
Shahjahanpur.—Shahjahanpur; Tilhar; Jalalabad;
 Pawayan *Budaun*—Budaun; Bilsa; Sahaswan;
 Ujhani; Kakrala; Islamnagar; Gunnaur; (Also
 see Not. No. 1973/VI-922, D/- 7-4-1920.—U. P.
 Gaz., D/- 10-4-1920, Pt. I p. 585.). *Pilibhit*.—
 Pilibhit; Bisalpur. *Allahabad*.—Allahabad;
 Allahabad cantt; Mau Aima; Phulpur; Sipahdar-
 ganj. *Cawnpore*—Cawnpore E. I. Ry. station;
 Cawnpore cantt; Bithur; Bilhaur; Akbarpur;
 M. Juhā Khurd. *Fatehpur*.—Fatehpur; Bindki;
 Jahanabad; Sheorajpur and Khajuba (see Not.
 No. 2295/VI-1054, D/- 27-4-1920.—U. P. Gaz.,
 Pt. I, p. 659). *Banda*.—Rajapur; Banda; Kairwi.
Hamirpur.—Hamirpur; Mandoa; Manoba; Kathi;

Kulpahar. *Jhansi*.—Jhansi; Jhansi cantt; Mau Ranipur; Lalitpur. *Jalaun*—Orai; Kalpi; Kunch; Jalaun. *Ghazipur*.—Ghazipur; Muhammadabad Usufpur; Zamania; Saiyidpur; Bahadurganj. *Benares*—Benares; Ramnagar; Railway station of Mogal Sarai. *Mirzapur*.—Mirzapur, Chunar; Abraura. *Ballia*.—Ballia, Rasra, Maniar, Sikandarpur, Baragaon, Sahatwara, Resti, Bairia, Bansdih. *Jaunpur*—Jaunpur, Machhlisbahr, Shahganj, Mungra Badshahpur notified area (see Not. No. 1104/VI-1676 D/ 24-2-1920.—U. P. Gaz, Pt. I, p 349). *Gorakhpur*.—Gorakhpur, Gorakhpur notified area, Padrauna-cum Shihganj. *Basti*.—Basti. *Azamgarh*—Azamgarh, Mau, Mubarikpur, Muhammadabad. *Naini Tal*.—Naini Tal, Haldwani, Ramnagar, Kashipur, Jaspur. *Almora*.—Ranikhet cantt, Almora. *Garhwal*.—Srinagar. *Lucknow*—Lucknow, Malihabad, Kakori. *Unao*—Unao, Newalganj, Maharajganj, Purwa, Bhagwantnagar, Moradabadganj, Bangarmau, Safipur. *Rae Bareilly*—Rae Bareilly, Salon, Dalmau, Atrehta (Maharajganj) and Nasirabad (see Not. No. 1701/VI-370, D/- 20-3-1920.—U. P. Gazette, Pt. I, p 534). *Sitapur*.—Sitapur, Biswan, Khaurabad, Misrih, Mahmudabad, Labarpur, Macnrehatta, Naimkhar. *Hardoi*—Hardoi, Shahabad,

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